



DIRECT SELLING
AUSTRALIA

Code of Practice

June 2018

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Introduction

An important role of the Direct Selling Association is increasing the community's understanding and acceptance of the direct sales channel in Australian retailing. The Code of Practice contributes to this by promoting ethical outcomes for consumers and direct sellers.

DSA members use different business models to market their products but each has the essential characteristic of the supply of a product arising or emanating from an agreement that is negotiated between a direct seller and a consumer away from a fixed retail location. Business models often include other aspects of retailing.

Understanding the Code requires some knowledge of the direct selling supply chain. Members are direct selling organisations. They market products to Australian and possibly overseas consumers. Their products are usually distributed through a wholesale model. That is a member sells a product to an independent direct seller who resells the product to an end user. Resellers are rewarded for their sales and sales by people they recruit into a member's business. Members provide direct sellers with business support particularly in education and training, and transaction and supply logistics.

At product and transaction levels direct selling is extensively regulated by Australian law. The Code complements this law and in respects gives consumers more assurance in their purchases.

The Code draws on global and local standards for direct selling. While its focus is on the rights of consumers of members' products it also guides behaviours expected between members and direct sellers and between members themselves.

The Code assures a quick and inexpensive alternative for resolving issues with binding resolutions on members. Compliance with the Code is essential for Association membership.

This version of the code was adopted in June 2018.

Objectives

As a complementary regulatory measure the Code aims to:

1. establish a point of reference for members and direct sellers in their dealings with consumers and potential direct sellers;
2. ensure consumers and direct sellers have the information needed for informed decisions;
3. reinforce a culture of compliance in members and direct sellers and minimise their risk of contravening the law; and
4. increase the confidence of consumers and direct sellers in their dealings with members.

Scope

Members must comply with any law applicable to their business and the Code. Foremost is compliance with the Australian Consumer Law. The Code is intended to complement this law. If there is an inconsistency the law prevails.

Direct sellers are bound by the Code to the extent that complying with it is a condition of their role in distributing members' products. In supplying a product and regardless of the independent status of a direct seller it is the member who is ultimately responsible to a consumer for any obligation imposed under the Code.

Members acknowledge that the Association is a member of the World Federation of Direct Selling Associations (WFDSA) and that compliance with WFDSA Code of Conduct is a condition of admission and continuing membership of DSA. If a member conducts business outside Australia, the member must comply with either: the code of ethics of the WFDSA-affiliated Association in that place, or the WFDSA Code of Conduct.

Should a member be subject of a complaint in a country in which it is not a member, the member must accept the jurisdiction of the code administrator in its home country (or if the company is not a member in its home country, any country in which it is a member of a WFDSA Association), and shall bear reasonable costs incurred by the home country code administrator associated with resolution of the complaint. Moreover, the code administrator of the home country may coordinate with the code administrator (if one exists) of the complainant's country, and, in evaluating the alleged complaint, apply, in order of priority: (i) the standards of the code of ethics in the country in which the complaint is filed, or (ii) the standards of the code of ethics in the subject company's home country, or, (iii) at a minimum, the standards set forth in the WFDSA Code of Conduct.

Interpretation

Unless the context otherwise requires:

Annual General Meeting has its meaning in the Constitution;

Association is the Direct Selling Association of Australia Inc;

Australian Consumer Law is Schedule 1 of the *Competition and Consumer Act (Cwth) 2010*;

Board has its meaning in the Constitution;

Code is the *Direct Selling Association of Australia Inc Code of Practice*;

Code Administrator is the person appointed for the time being under the Constitution for the purposes of the Code;

consumer is a person who acquires or may acquire a product that is of a kind that is ordinarily acquired for personal, domestic or household use or consumption and is not held out as being acquired for re-supply;

Constitution is the *Direct Selling Association of Australia Inc Constitution*;

direct seller is a person who is engaged by a member predominantly to market products directly to consumers, and also to recruit persons to sell, its products;

direct selling is the supply of a product that arises or emanates from an agreement negotiated between a direct seller and a consumer away from a fixed retail location;

Executive Director has its meaning in the Constitution;

fly posting is the use of advertising material in the nature of posters, flyers or similar material in unauthorised places;

marketable inventory is a product having a current shelf life, but not a product acknowledged by a direct seller as being sold as seasonal, discontinued or as a special promotion;

member is a Member within the meaning of the Constitution;

product includes goods and services;

reasonable terms includes the repurchase of marketable inventory within 12 months of it being acquired by a direct seller for not less than ninety per cent, after any set-off or legal claims, of the amount paid for the product.

In the Code:

- a. a reference to supply includes a reference to agreeing to supply;
- b. where a member supplies a product to a consumer through a direct seller but under an agency arrangement a reference to the direct seller is also a reference to the member;
- c. words in the singular import words in the plural and vice versa; and
- d. a reference to writing includes writing in a form that is capable of being copied or printed.

The Code applies to a direct selling entity:

- a. while it is a member; and
- b. if it is no longer a member, in respect of matters while it was a member.

Part 1 – Consumer

Application

1. To the extent it is not inconsistent with the requirements of the Australian Consumer Law this Part applies to:
 - a. a direct selling agreement; and
 - b. an agreement that is not within the ordinary meaning of direct selling as determined by the member.

Note: For guidance on the requirements of the Australian Consumer Law for unsolicited consumer agreements see the Association's Legal Compliance & Risk Management Guide for Members.

Claims

2. In promoting the supply of a product a member or direct seller must not make a false or misleading claim concerning:
 - a. its standard, quality, value or grade;
 - b. any supporting testimonial;
 - c. any sponsorship or approval;
 - d. its performance;
 - e. its place of origin;
 - f. a need for the product;
 - g. any guarantee or warranty of the product; or
 - h. any rebate, gift, prize or other item associated with its supply.

Identity & Purpose

3. A member must ensure that before a presentation is made to a person for the purpose of supplying a product the direct seller informs the person of:
 - a. the identity of the direct seller and member;
 - b. the purpose of the presentation; and
 - c. that if requested the direct seller must cease the presentation and leave the person's presence.

Information

4. A member and direct seller must:
 - a. ensure that a consumer is given accurate and complete information reasonably required to make an informed choice;
 - b. ensure that any claims regarding product efficacy are only those that have been authorised by the member;
 - c. take reasonable steps to be satisfied that a consumer understands any demonstration, explanation or other information about a product; and
 - d. not use any testimonial or endorsement that is unauthorised, untrue, obsolete or otherwise inapplicable, unrelated to the offer or used in any way likely to mislead the consumer.

Literature

5. The member must ensure that promotional literature, advertisements and mailings do not contain product descriptions, claims, photos or illustrations that are misleading or deceptive. Promotional literature must contain contact details of the member and may include the contact details of the direct seller.

Purchase Agreement/Order Form

6. An agreement must be in writing, legible, expressed in plain language and include the following:
 - a. a description of the product;
 - b. any statutory requirement for disclosure of warranties against defects;
 - c. details of any after sale service;
 - d. the name and contact details of the member, direct seller and consumer;
 - e. a summary of any right by the consumer to cancel the agreement and how the right may be exercised;
 - f. the price of the product or method for calculating its price;
 - g. any postal or delivery charges;
 - h. the terms for payment;
 - i. any agreed delivery date; and
 - j. a reference to the Code and the Association's website.
7. A consumer must be given a copy of an agreement for the supply of a product:
 - a. if the agreement is made in person, immediately after it is signed by the consumer;
 - b. if the agreement is made by telephone, no more than five days after the agreement is made; or otherwise, as soon as practicable after it is made.
8. Where practicable an agreement must be signed by the direct seller and consumer.

Delay

9. If a product is not delivered:
 - a. within seven days after an agreed date, the consumer must be advised of the delay;
 - b. within twenty one days after an agreed date, the consumer may cancel the agreement without cost.

Cooling Off

10. A consumer who has purchased a product under a direct selling agreement, not being an unsolicited consumer agreement, may cancel the agreement by giving the direct seller or member notice of cancellation within ten clear business days of entering the agreement.
11. A consumer must cancel the agreement in the manner described in the agreement.

Supply & Payment

12. If the agreement is for the supply of a non-recoverable or irrevocable service, the service must not be supplied and no payment accepted in any cooling off period.

Privacy

13. Unless a consumer earlier consents, a member or direct seller must not contact the consumer by telephone or in person:
 - a. on a Sunday or public holiday;
 - b. before 9 am on any other day;
 - c. after 6 pm on any day other than Saturday; and
 - d. after 5 pm on a Saturday.
14. A member or direct seller must only use information given by a consumer for the express or implied purpose for which it was given.
15. A member or direct seller must comply with any request by a consumer that the member or direct seller not contact the consumer by any means for the purposes of supplying a product.

Fairness

16. A member or direct seller must act conscientiously in any dealing with a consumer and not:
 - a. abuse any trust by the consumer;
 - b. exploit any vulnerability from age, illness, inexperience, understanding or language familiarity; or
 - c. deny the consumer sufficient time to examine and be satisfied with any contractual documentation.

Referrals

17. A member or direct seller must not induce a person to purchase a product on a representation that the person may reduce or recover the purchase price by referring prospective consumers to the member or direct seller for similar purposes if that referral is uncertain.

Enforcement

18. The primary responsibility for ensuring consumer rights under this Code against:
 - a. a member, is with the Association; and
 - b. a direct seller, is with the member.

Training

19. A member must provide adequate training for a direct seller to comply with the requirements of the law and Code in supplying the member's products.

Part 2 - Business

Recruiting

20. A member or direct seller must ensure that before a presentation is made to a person for the purpose of recruiting that person as a direct seller the member or direct seller informs the person of the:
 - a. identity of the member and direct seller; and
 - b. purpose of the presentation.
21. In promoting the role of a direct seller a member or direct seller must:
 - a. present earnings representations and sales figures that are truthful, accurate and are based on documented and substantiated facts in the local market;
 - b. explain that actual earnings and sales vary from person to person depending on factors including the seller's personal skills and the time and effort put in;
 - c. not engage in any misleading, deceptive or unfair conduct;
 - d. not make false representations or exaggerated claims about the amount or timing of earnings from involvement as a direct seller;
 - e. not promote involvement solely or predominantly on recruiting other direct sellers; and
 - f. not engage in fly posting.
22. A person who attends a presentation but does not become a direct seller must be refunded on request any payment made at or after the presentation.
23. A member must ensure that a direct seller does not market material or require the purchase by another person of material that is inconsistent with a policy or procedure imposed by the member.

Agreement

24. An agreement between a member and direct seller must:
 - a. clearly establish the legal status of the direct seller;
 - b. contain all relevant terms of the agreement, including financial obligations, termination and assignment rights, and any restrictions on competitive rights;
 - c. require a direct seller to comply with the Code;
 - d. be recorded in a form that can be retained; and
 - e. be formally acknowledged by the parties.

Payments

25. Any payment by a direct seller under an agreement including a payment related to joining, renewing or training with the member or for marketing materials or sales aids must:
 - a. be reasonably required for the purposes of becoming a direct seller;
 - b. represent reasonable value;
 - c. be fully refundable (less commission) in the event that the direct seller terminates the agreement within 30 days of payment; and
 - d. not require product purchases as part of the application process unless included in the starter kit.

Pyramids

26. A member or direct seller must not engage in any activity that is a pyramid scheme within the meaning of the Australian Consumer Law.

Inventory

27. If requested, upon either party terminating a direct seller agreement, the member must repurchase inventory. The direct seller may return, at their expense, any unsold, resaleable inventory, including member produced demonstration material, sales aids and demonstration kits purchased by a direct seller within the previous 12 months and the member must refund the direct seller's original cost less a 10% administration charge and any related commissions.
28. A member must not require or encourage a direct seller to unreasonably purchase inventory or assume other expense in connection with its business having regard to:
 - a. the relationship the inventory or expense has to possible earnings;
 - b. the marketability of the inventory;
 - c. the direct seller's prior business performance; and
 - d. any inventory and restocking policy.
29. A member shall not engage in unfair, misleading or deceptive recruiting practices that require or encourage a direct seller to purchase unreasonable quantities of product or sales aids.
30. A member must take reasonable steps to ensure that compensation received by a direct seller on purchases relates to consumption of the product.

Remuneration & Accounts

31. A member must give a direct seller periodic accounts concerning sales, purchases, details of earnings, commissions, bonuses, discounts, deliveries, cancellations and other relevant data, in accordance with the member's arrangement with the direct seller.
32. A direct seller's remuneration shall be derived from sales of products or services to consumers. Earnings must not include any payment for the act of recruitment.

Member Relations

33. Members must conduct their business in the spirit of fair competition.
34. A member or direct seller engaged by the member must not engage in any deceptive, unlawful or unconscionable behaviour, systemic or otherwise, that results or may result in:
 - a. a direct seller terminating an agreement relating to the supply of another member's products and entering a similar agreement with that member; or
 - b. loss or damage to the business of another member.
35. A member or direct seller engaged by a member must not expressly or impliedly refer to, or use any comparison with, another member, a product supplied by that member or its sales and marketing plan that:
 - a. is misleading;
 - b. is unsubstantiated or incapable of being substantiated;
 - c. denigrates the member or product; or
 - d. takes unfair advantage of any goodwill attached to that member's intellectual property.

Privacy and Data Protection

36. Members and direct sellers shall take appropriate steps to ensure the protection of all personal information provided by a consumer, a potential consumer, or a direct seller, in accordance with Australian laws that apply to privacy and data protection.
37. Members and direct sellers shall contact direct sellers only in a reasonable manner and during reasonable hours to avoid intrusion.

Part 3 – Administration

Complaints

38. A member must have a formal complaints handling system.
39. A member must designate a person who is responsible for administering the complaint handling system and who is the point of contact for matters relating to the administration of the Code.
40. The system must record:
 - a. complaints made to the member by a consumer concerning the conduct of a direct seller, the member's product or the supply of a product;
 - b. complaints from a direct seller concerning the application of the Code to an agreement with a member;
 - c. the outcome of investigation of the complaint; and
 - d. how the complaint is resolved.
41. The Code Administrator may access and copy a member's record of complaints.

Enforcing Rights - Consumers

42. A complaint by a consumer arising from the Code must be first raised with the member.
43. If the complaint is not resolved by the member to the complainant's satisfaction within ten clear business days it may be formally made to the Association in a form approved by the Board and referred to the Executive Director.
44. If the complaint is not resolved by the Executive Director to the complainant's satisfaction within twenty clear business days, the Executive Director must refer the complaint to the Code Administrator.
45. The Code Administrator must investigate and determine the complaint and may in the process attempt to settle the complaint between the parties.
46. In investigating and determining a complaint the Code Administrator may as the Code Administrator considers reasonable:
 - a. examine witnesses and take evidence;
 - b. require production of records and documents; and
 - c. require responses to questions orally or in writing.
47. The Code Administrator may do any of the following:
 - a. decide not to proceed with an investigation or dismiss the complaint;
 - b. order the member to compensate the consumer;
 - c. order the member to repair or replace a product without charge;
 - d. order the member to pay costs associated with investigating the complaint; or
 - e. refer the complaint to the Board with a recommendation for disciplinary action.
48. An order made by the Code Administrator must be such that the Code Administrator considers to be fair and reasonable as between the parties.
49. An order pursuant to Clauses 42(b), (c), and (d) is binding and enforceable against the member and a certificate to that effect issued by the Executive Director is conclusive evidence of the matters set out in the certificate.
50. A member is not required to produce documents or respond to questions if it could prejudice legal proceedings.
51. A member cannot rely on the independent contractor status of a direct seller for the purposes of the Code.

Enforcing Rights – Direct Sellers & Members

52. A complaint by a direct seller or member relating to an alleged breach of the Code must be made in writing to the Executive Director.
53. If the complaint is not resolved the Executive Director must refer it to the Code Administrator.
54. The Code Administrator must investigate and determine the complaint and may in the process attempt to settle the complaint between the parties.
55. In investigating and determining a complaint the Code Administrator may:
 - a. summons witnesses and take evidence on oath or affirmation;
 - b. require production of records and documents; and
 - c. require responses to questions orally or in writing.
56. The Code Administrator may do any of the following:
 - a. decide not to proceed with an investigation or dismiss the complaint;
 - b. make such order as appropriate in the circumstances;
 - c. refer the complaint to the Board with a recommendation for disciplinary action.
57. An order made by the Code Administrator must be such that the Code Administrator considers to be fair and reasonable as between the parties.
58. An order pursuant to Clause 51(b) is binding and enforceable against the member and a certificate to that effect issued by the Executive Director is conclusive evidence of the matters set out in the certificate.
59. A member is not required to produce documents or respond to questions if it could prejudice existing legal proceedings.

Report

60. A report on the operation of the Code must be presented to the Annual General Meeting.

Review

61. The Board must ensure that the content and operation of the Code is regularly reviewed against its stated objectives.

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