

# Code of Practice

March 2021

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## Introduction

An important role of Direct Selling Australia (DSA) is to promote understanding and acceptance within the broader community of the role of the direct sales channel in Australian retailing. The Code of Practice (**Code**) contributes to this aim by promoting ethical standards for direct sellers and positive experiences for consumers.

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. Members' 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. Independent 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 education and training, and transaction and supply logistics.

At product and transaction levels in Australia, direct selling is extensively regulated by both State and national laws. The Code complements these laws and provides further protections to consumers so they may have greater 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 outlines 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 DSA membership.

This version of the Code was adopted in March 2021.

## Objectives

As a complementary self-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 and therapeutic goods legislation (as applicable). The Code is intended to complement these laws. If any inconsistencies exist, 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 DSA 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;

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

**Board** has its meaning in the Constitution;

**Chief Executive Officer** has its meaning in the Constitution;

**Code** is Direct Selling Australia Limited's 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 Direct Selling Australia Limited's 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;

**DSA** is Direct Selling Australia Limited

**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** include the repurchase of marketable inventory being acquired by a direct seller for not less than ninety per cent, after any set-off for legal claims, of the amount paid for the product;

**Sanctionable Conduct** has its meaning in the Constitution;

**therapeutic good** has its meaning in the Therapeutic Goods Act 1989 (Cth);

**therapeutic goods legislation** means the Therapeutic Goods Act 1989 (Cth) and the Therapeutic Goods Advertising Code (No. 2) 2018

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 or the therapeutic goods legislation, 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 DSA'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 or endorsement ;
  - 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.

In promoting the supply of a therapeutic good, a member or direct seller must comply with all relevant therapeutic goods legislation, including ensuring that no unlawful therapeutic claims are made.

## Identity & Purpose

3. A member must ensure that before a presentation, whether in person or via social media or other technological means, is made to a person for the purpose of promoting or 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, if applicable, leave the person's presence.
4. A direct seller that uses a social media platform to promote or supply goods or services in any form (directly or indirectly e.g. attraction marketing), must display information about the member on whose behalf the product is being promoted or supplied.

## Information

5. 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. ensures 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; and
  - e. in respect of therapeutic goods, ensure that any testimonial or endorsement complies with the requirements of the relevant therapeutic goods legislation, including ensuring any relevant disclosures have been made.

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## Literature

6. The member must ensure that promotional literature, advertisements, social media posts 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. In respect of therapeutic goods, all promotional literature, advertisements, social media posts must comply with relevant therapeutic goods legislation.

## Purchase Agreement/Order Form

7. 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 disclosures (e.g. 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 DSA's website.
8. 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.
9. Where practicable an agreement must be signed by the direct seller and consumer.

## Delay

10. 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

11. 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.
12. A consumer must cancel the agreement in the manner described in the agreement.

## Supply & Payment

13. 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

14. 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.

15. A member or direct seller must only use information given by a consumer for the express or implied purpose for which it was given unless otherwise permitted by law.
16. 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

17. A member or direct seller must act conscientiously in any dealing with a consumer and not:
  - a. abuse a consumer's trust;
  - b. exploit any vulnerability arising 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

18. 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.

## Enforcement

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

## Training

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

## Part 2 –Business

### Recruiting

21. A member or direct seller must ensure that before a presentation (e.g. face to face presentations or pre-recorded presentations via technological means) is made to a person for the purpose of recruiting that person as a direct seller the member or direct seller clearly and accurately informs the person of the:
  - a. identity of the member and direct seller; and
  - b. purpose of the presentation
22. In promoting the role of a direct seller in any medium (e.g. printed, audio, face-to-face statements, social media posts) 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;
  - e. not promote involvement solely or predominantly on recruiting other direct sellers;
  - f. not engage in fly posting.
23. All recruitment material in whatever medium must clearly identify the member, giving the member's name at least as much prominence as the name of the direct seller, or direct selling group, to whom prospects are invited to respond.
24. All presentations must promote the business as one where direct sellers sell the member's products to consumers.
25. Potential direct sellers must:
  - (a) be informed that actual earnings and sales will vary from person to person and will depend upon the skills of the seller, the time and effort put in and other factors; and
  - (b) be provided with sufficient information to enable a reasonable evaluation of the opportunity to earn income.

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.
26. 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

27. 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. provide for termination by either party;
  - d. meet all statutory requirements, including the unfair contract terms provisions of the Australian Consumer Law;
  - e. require a direct seller to comply with the Code;
  - f. be recorded in a form that can be retained; and
  - g. be formally acknowledged by the parties.

## Payments

28. 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

29. 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

30. 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, resalable 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.
31. 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.
32. 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.
33. 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

34. 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.
35. 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

36. Members must conduct their business in the spirit of fair competition.
37. 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.
38. 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

39. 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, including the implementation of privacy policies and collection notices as required by legislation .

40. Members and direct sellers shall contact direct sellers only in a reasonable manner and during reasonable hours to avoid intrusion.

## Part 3 – Administration

### Complaints

41. A member must have a formal complaint handling system.
42. 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.
43. The system must record:
- complaints made to the member by a consumer concerning the conduct of a direct seller, the member's product, product, therapeutic or income claims or the supply of a product;
  - complaints from a direct seller concerning the application of the Code to an agreement with a member;
  - the outcome of investigation of the complaint; and
  - how the complaint is resolved.
44. The Code Administrator may access and copy a member's record of complaints.

### Enforcing Rights –Consumers

45. A consumer making a complaint arising from the Code must be first raised this with the member, unless it relates to therapeutic goods legislation. If a complaint relates to a therapeutic good, the Chief Executive Officer may raise the issue with the member directly.
46. 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 DSA in a form approved by the Board and referred to the Chief Executive Officer.
47. If the complaint is not resolved by the Chief Executive Officer to the complainant's satisfaction within twenty clear business days and, following investigation the Chief Executive Officer forms the view that a Member may have engaged in Sanctionable Conduct, the Chief Executive Officer may either prepare:
- formal disciplinary notice setting out the factual and legal basis on which the Member is alleged to have engaged in Sanctionable Conduct (**Disciplinary Notice**); or
  - an informal letter to the Member outlining issues of concern, and the Chief Executive Officer must recommend whether the Board should proceed with the further disciplinary steps set out in clause 3.4 of DSA's Constitution.
48. If the complaint is not resolved by the Chief Executive Officer to the complainant's satisfaction within twenty clear business days and, following investigation the Chief

Executive Officer forms the view that a Member has not engaged in Sanctionable Conduct the Chief Executive Officer may close the case and advise the consumer of alternate dispute resolution services.

49. If the Chief Executive Officer is aware or becomes aware that regulatory or legal proceedings are contemplated or underway, they may elect to suspend or end the investigation.

## Enforcing Rights – Direct Sellers & Members

50. A complaint by a direct seller or member relating to an alleged breach of the Code must be made in writing to the Chief Executive Officer.
51. The CEO may investigate a complaint or concern regarding any member on his or her own motion or on receipt of a complaint from a consumer or a member or other interested party.
52. If following investigation, the complaint is not resolved and the Chief Executive Officer forms the view that a Member may have engaged in Sanctionable Conduct, the Chief Executive Officer may either prepare:
  - a. a formal disciplinary notice setting out the factual and legal basis on which the Member is alleged to have engaged in Sanctionable Conduct (**Disciplinary Notice**); or
  - b. an informal letter to the Member outlining issues of concern,and the Chief Executive Officer must recommend whether the Board should proceed with the further disciplinary steps set out in clause 3.4 of DSA's Constitution.
53. If the Chief Executive Officer is aware or becomes that regulatory or legal proceedings are contemplated or underway, they may elect to suspend or end the investigation<sup>3</sup>

## Report

54. A report on the operation of the Code must be presented at the Annual General Meeting.

## Review

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





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