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*Cooling-off periods in Victoria:
their use, nature, cost
and implications*
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“ Preface ”

Cooling-off periods are an important consumer protection tool. They allow consumers a timeframe during which they can rescind a signed contract with little or no penalty. Cooling-off periods reduce consumer detriment by allowing consumers to reconsider a decision made in haste, under pressure, or without all the information needed to make a good choice.

All Australian jurisdictions have legislation that provides for cooling-off periods in some form or another, in a number of industries and a number of selling situations. However, there are opportunities for improvement: inconsistencies exist between jurisdictions, cooling-off periods are not working as effectively as they could, and consumers and traders are often confused about their rights and obligations.

To progress reform in this important area, Consumer Affairs Victoria is pleased to present *Cooling-off periods in Victoria: their use, nature, cost and implications*.

This is the most comprehensive research report ever produced on cooling-off periods in Victoria. It leads the way at a time when national and state laws are undergoing major change to reform the consumer policy framework and reduce the regulatory burden on business.

This research paper informs the development of better laws. It provides a snapshot of how cooling-off periods are being used in Victoria, gives a rare insight and understanding of how effectively our laws are working, and explores what a best practice cooling-off period law might include.

The report explores the use of cooling-off periods in consumer policy, analyses the benefits and costs of cooling-off periods, and the decision-making environments where they are most effective.

The report also summarises the findings of a major survey of Victorian consumers and traders. It reveals consumers' expectations of cooling-off periods and the incidence and circumstances surrounding their use. It also explores traders' attitudes and approaches to cooling-off periods.

This paper is one of a series of research papers designed to stimulate debate on consumer policy issues. It does not represent government policy, but rather provides a catalyst for discussion. Consumer Affairs Victoria welcomes your comments.



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Contents

Executive summary	1	7 Survey of traders' and consumers' understanding of cooling-off periods	31
1 Introduction	3	7.1 Summary of findings – Traders	31
1.1 The framework for analysing and designing cooling-off periods	3	7.2 Summary of findings – Consumers	32
2 Cooling-off periods in Victoria	5	8 Research objectives	33
2.1 Support for maintaining and extending cooling-off periods	8	9 Research methodology	35
3 The justification for cooling-off periods	9	9.1 Overview of methodology	35
3.1 High-pressure sales techniques	10	9.2 Phase 1: Consumer quantitative research	35
3.2 Short-sighted or emotion-based decisions	12	9.3 Phase 2: Trader depth interviews	36
3.3 Lack of information	14	9.4 Phase 3: Consumer depth interviews	37
3.4 The size of the benefits	17	10 Detailed findings – Traders' perspective	39
4 The costs of cooling-off periods	19	10.1 Traders' overall view of cooling-off periods	39
4.1 Delays in transactions	19	10.2 Examining specific industry perspectives	40
4.2 Administration and compliance burden on business	20	10.3 Traders' feedback on the cooling-off process	43
4.3 Moral hazard	20	11 Detailed findings – Consumers' perspective	45
5 Design features of cooling-off periods	23	11.1 Awareness of cooling-off periods	45
5.1 Length of cooling-off period	23	11.2 Consumers affected by cooling-off periods	49
5.2 Taking possession of goods	24	11.3 Purchasers affected by cooling-off periods	49
5.3 Process for cooling off	25	11.4 Incidence of claimed Exercisers	55
5.4 Fee for exercising cooling-off rights	25	11.5 Incidence of Exercisers	56
5.5 Treatment of linked contracts	26	11.6 Exercisers' awareness of cooling-off periods	57
5.6 Waivers	26	11.7 The experience of Exercisers	61
5.7 Traders' obligations to inform consumers	26		
6 Consistency in cooling-off periods	29		

Contents (continued)

11.8 Knowledge of cooling-off period timeframes	64
11.9 Exploring the role of cooling-off periods	65
11.10 Motivations for cooling off	69
11.11 Barriers to using cooling-off periods	71
11.12 What should cooling-off periods apply to?	80
11.13 How long should cooling-off periods be?	81
Appendix A: Case studies of cooling-off periods	85
Bibliography	91

“ *Executive Summary* ”

Cooling-off periods refer to a specified timeframe during which a consumer who has ‘cooled off’ on their decision to enter into a contract or agreement can legally withdraw from the contract with little or no penalty.

In Victoria, such periods apply to door-to-door sales, telemarketing, domestic building contracts, residential property not bought at auction, new and second-hand cars sold by licensed dealers, retirement village contracts and contracts with introduction agents. Consumers and traders generally support the use of cooling-off periods in sectors where legislation provides for them.

Cooling-off periods do not restrict consumer choice and generally impose only minor delays on transactions. In the past, cooling-off periods have been used to address a wide range of problems including high-pressure sales techniques, short-sighted or emotion-based decisions, and lack of information about goods being purchased.

However, they do have costs. There is the cost of delayed transactions and the cost to business associated with administration and compliance. However, the design of cooling-off periods, and making sure they apply to the most suitable industries, can manage many of these costs.

Overall, consumers are most likely to benefit from cooling-off periods in markets in which:

- there is limited time between the commencement of the transaction (for example, when the consumer and trader start negotiations or discussions), and when the contract is signed. If this period is very short, consumers have little time to reflect on the product or service and to withdraw before the contract is signed.
- consumers are making extremely short-sighted decisions because they are under pressure or in a temporarily emotional state. Consumers may feel under pressure at the time of a sale because of physical circumstances, for example, if they cannot walk away, or because of the selling practices of the trader.
- it is likely that consumers would change their mind or new information would emerge during the cooling-off period. A cooling-off period would have few benefits if problems or information did not emerge until long after the product was purchased.
- cooling-off periods are likely to encourage traders to change their behaviour in a way that minimises consumer detriment.

The costs of cooling-off periods are also likely to be lower in industries in which:

- the costs to traders and consumers of delaying the transaction are small
- cooling-off periods are designed simply, so business compliance costs are low and the risk that a business might inadvertently breach its cooling-off obligations is also low.

While it is possible to describe the industries in which cooling-off periods are likely to be most effective, and the design of their cooling-off

periods, it appears there has been no systematic analysis of how cooling-off periods in Australia are implemented. There are often inconsistencies in the characteristics of the transactions covered and details of the way cooling-off periods are applied. There does not appear to be a clear rationale for these differences.

For example, while experience has shown that consumers rarely use cooling-off periods in sectors in which there is a long lead time between commencing the transaction and finalising and signing the sales contract, cooling-off periods are still found in areas such as retirement village contracts and building contracts. As expected, in these sectors the cooling-off periods are rarely used, because those who are likely to withdraw from the transaction do so before the contract is signed. In addition, while cooling-off periods cover some areas associated with high-pressure sales, such as telemarketing and door-to-door sales, similar sales situations, such as free seminars, are not always covered.

There is also considerable variation in the time allowed for cooling-off periods in different industries, and the time allowed in the same industry in different states and territories. The differences can have substantial costs. From a business perspective, there are administrative costs, particularly for national businesses with different obligations in different jurisdictions. From a consumer perspective, inconsistency can make it difficult for consumers to understand and remember their rights, or feel confident taking action (see Chapters 7–11 of this research paper).

It is important to note that the survey of consumers and traders in Chapters 7–11 was conducted before changes to Victoria's motor car trading laws came into effect on 1 December 2008. The changes introduced a three-day cooling-off period for new car sales.

Chapters 7–11 of the research paper explore consumers' and traders' understanding of cooling-off period legislation and provide insight into what a best practice cooling-off law might be. The research was conducted in three phases:

- 1) Consumer quantitative research – 1,500 Computer Assisted Telephone Interviews (CATIs) with Victorian consumers
- 2) Trader depth interviews – 22 face-to-face depth interviews with traders representing industries covered by cooling-off periods
- 3) Consumer depth interviews – 32 telephone depth interviews with consumers who had exercised their cooling-off rights or had been dissatisfied with their purchase and not exercised their right to cool off.

The survey was conducted by Latitude Research on behalf of Consumer Affairs Victoria.

Cooling-off periods are defined periods of time which give one or more parties involved in a decision or agreement the opportunity to reverse their decision, cancel the agreement, or avoid other costs associated with hasty action. They can be used to:

- provide time to reconsider a contract before it becomes binding. Such periods can apply to agreements to supply goods or services or be bound by a decision or determination. In NSW, for example, there is a 14-day cooling-off period for mediated agreements between farmers and their creditors. (*Farm Debt Mediation Act 1994* (NSW) s. 11A)
- provide a buffer between the decision to buy and the receipt of a product, to minimise the risk that the product is used on impulse. This is one justification for cooling-off periods on buying firearms, obtaining a firearm licence and making large payouts to gamblers. (Hawks 1998)
- avoid conflicts of interest by delaying the movement of employees between related organisations. In California, for example, there is a one year cooling-off period within which an auditor cannot become the financial officer for one of their publicly traded audit clients (Wright and Booker 2005, p. 3). There has also been debate in Australia about whether there should be a cooling-off period during which retired politicians cannot obtain employment or consultancies in their portfolio area. (Wainwright 2003, p. 1)
- suspend heated negotiations so they can recommence later in a less emotionally-charged environment. The Industrial Relations Commission, for example, has the power to provide for a cooling-off period to help resolve industrial disputes.

In the context of consumer policy, the first situation is the most relevant. Usually, once a contract is signed, or an agreement reached, it is binding on all parties to the agreement. Cooling-off periods, however, set a period during which at least one of the parties has the right to reconsider their decision and withdraw from the agreement with little or no penalty.

Cooling-off periods are common in many areas of consumer policy in Australia and overseas. In Victoria, the scope of their application is usually defined by the setting in which the negotiation of the agreement takes place, for example, telemarketing or door-to-door sales; or by the industry sector in which the transaction takes place, such as domestic building or residential real estate.

Research summarised in Chapters 7–11 of this paper estimates that in the past two years, about eight per cent of Victorian consumers exercised their cooling-off period rights. Those who cancelled a contract often did so just after having signed the agreement or just before the cooling-off period expired.

1.1 The framework for analysing and designing cooling-off periods

The general intention of cooling-off periods is to reduce consumer detriment by changing the environment in which consumers make decisions. It gives consumers more time to consider their choice or gather information on whether the agreement they entered into is in their best interests. Consumers can reflect on or research their decision away from the pressure of the sale and check whether, in reality, the agreement is

consistent with what they expected at the time it was made. Consumers can cancel the agreement if, on reflection, they do not want to continue with the transaction. Cooling-off periods are most likely to reduce consumer detriment and benefit the Victorian economy if:

- the problems identified in the relevant industry are suited to being addressed through cooling-off
- the costs of cooling-off regulation are not excessive
- the design of the cooling-off period is likely to generate benefits that outweigh costs.

These issues are discussed in the following sections, which analyse the scope of cooling-off periods currently used in Victoria, the reasons why cooling-off periods have been used in the past and how they address these problems, the types of costs that are potentially associated with cooling-off regulation, and the factors to consider in designing a cooling-off period.

“Cooling-off periods in Victoria”

2

Several areas of Victoria’s consumer laws provide for cooling-off periods, summarised in Table 1 (Appendix A summarises laws in other states and overseas).

The *Fair Trading Act 1999*, for example, requires any cooling-off period offered on non-contact sales¹ to be clearly identified in the agreement and to be for a period of at least 10 days following the receipt of the goods by the purchaser or 10 days after an agreement to supply a service is entered into. These provisions do not require a cooling-off period, but set standards on such periods if traders choose to offer them.

Other cooling-off periods used in Victoria, outside the consumer policy sphere, include:

- transactions between a resident and the proprietor or a close associate of the proprietor of a supported residential service². These are subject to a cooling-off period of five days after the day on which the transaction was entered into.
- gas and electricity retail contracts, which have a cooling-off period of five business days for contracts involving minor works to provide for connection, and 10 business days for other contracts. The cooling-off period starts from the date of the agreement. These periods apply unless the *Fair Trading Act 1999* allows a longer period. (The Energy Retail Code, October 2007)
- agreements to repair an accident-damaged motor vehicle, which can be terminated up to three working days after signing. The cooling-off period can be waived by signing a written waiver after one day after the authority to repair is signed.
- conditional cost agreements between lawyers and their clients, which provide that some or all of the legal costs of a case are conditional on winning the case. These agreements must include a cooling-off period of five clear business days.
- a cooling-off period of 28 days for the issue of a firearms licence.

¹ Agreements made away from the supplier’s premises and not in the presence of both the purchaser and the supplier (for example, internet sales) but excluding telemarketing, which is covered by separate provisions in the *Fair Trading Act 1999*.

² Supported residential services are privately-operated establishments that cater for older or disabled people who wish to live in a communal setting or who require some support.

Table 1 Cooling-off periods in the Victorian Consumer Affairs portfolio

Type of contract	Duration of cooling-off period	Exceptions and conditions
<p>Contact sales — agreements for purchases over \$50 entered into at a private residence, the purchaser’s workplace or at the supplier’s business premises if the purchaser is dependent on the supplier for transport from the premises. (<i>Fair Trading Act 1999</i>)</p>	<p>Ten days, including the day the agreement is made (s. 63). Six months if the purchaser was not given the agreement immediately after signing, or the agreement did not inform the purchaser of the right to cancel or include a notice to be used if the agreement was cancelled. Three months if the seller did not comply with requirements regarding the time and duration of visits.</p>	<p>Notice of cancellation must be written in the specified form and delivered, faxed or posted to the supplier.</p>
<p>Telemarketing — agreements in which negotiations that led to the agreement took place over the phone. (<i>Fair Trading Act 1999</i>)</p>	<p>Ten days following receipt of the agreement documentation (s. 67H). Six months if the purchaser was not given the agreement documentation within five days of making the agreement or the agreement did not inform the purchaser of the right to cancel.</p>	<p>Notice of cancellation must be written in the specified form and delivered, faxed or posted to the supplier.</p>
<p>Domestic building contracts (<i>Domestic Building Contracts Act 1995</i>)</p>	<p>Five business days (s. 34). If notice of the cooling-off period is not in the contract, within seven days of becoming aware that the contract should have contained such a notice.</p>	<p>The building owner must give the builder written notice of the intention to cancel. The builder can retain up to \$100 and any out-of-pocket expenses. If the notice was not in the contract and the contract was terminated after work commenced, the builder is entitled to a fair price for work already done. The cooling-off period does not apply if the building owner and builder have a previous contract with substantially the same terms and conditions, or the building owner received independent legal advice on the contract.</p>
<p>Retirement Villages — agreements with prospective residents of a retirement village. (<i>Retirement Villages Act 1986</i>)</p>	<p>Three days after signing the residence contract (s. 24). If the contract does not include a conspicuous notice, it may be rescinded no later than six months after becoming aware of the breach.</p>	<p>To rescind the contract, the resident must provide a signed notice (must be conspicuous and included in the contract) to the owner or the owner’s agent. All monies must be returned to the resident, except \$100 or 0.2 per cent of the resident’s ingoing contribution, whichever is greater.</p>
<p>Residential property and farming land (<i>Sale of Land Act 1962</i>)</p>	<p>Three business days after signing the contract (s. 31). If the contract does not clearly notify the purchaser of their cooling-off right, the purchaser can rescind the contract any time prior to taking possession or receiving rents or profits.</p>	<p>Notice can be given to the vendor or the agent. The vendor is entitled to the greater of \$100 or 0.2 per cent of the purchase price.</p>

Type of contract	Duration of cooling-off period	Exceptions and conditions
Second-hand cars or off-trade premises sales (<i>Motor Car Traders Act 1986</i>)	Three business days after the purchaser signs the agreement (s. 43).	Written notice to terminate must be served on the motor car trader or their agent. The vendor can retain the greater of \$100 or one per cent of the purchase price. Any credit agreement is automatically discharged. The purchaser must return the vehicle unless a defect, outside the purchaser's control, made the car unable to be driven or unroadworthy. The trader must then be permitted to collect the car.
New car sales (<i>Motor Car Traders Act 1986</i>)	Three business days after the purchaser signs the agreement (s. 43).	As per sales of second-hand cars, except that the vendor can retain the greater of \$200 or two per cent of the purchase price.
Introduction agency services (<i>Introduction Agents Act 1997</i>)	Three clear business days after receiving a copy of the signed agreement. (schedule)	The agent can retain the lower of \$50 or 10 per cent of the amount to be paid under the agreement.

In addition, Commonwealth legislation provides for cooling-off periods that are available to Victorians, for example:

- the *Corporations Act 2001* includes a 14-day cooling-off period for retail customers purchasing insurance products, investment life insurance products, managed investment products, superannuation products and retirement savings accounts.
- regulations under the *Trade Practices Act 1974* provide an industry code for franchising agreements, with a seven-day cooling-off period after the signing of such agreements.
- in NSW, the cooling-off period is five business days for door-to-door sales and telemarketing sales
- the minimum purchase covered is \$100 in NSW and \$75 in Queensland
- there are differences in the definitions of door-to-door sales and telemarketing that affect coverage. Victoria, for example, includes sales in which the purchaser relies on the supplier for transport from the premises where the agreement is entered into, regardless of whether or not those premises are the supplier's usual place of business.

While cooling-off periods are generally used to address the same types of issues across Australia, there are differences among the states and territories in their design and coverage. Sometimes even the general provisions of fair trading legislation differ between jurisdictions. Most jurisdictions provide for a 10-day cooling-off period for door-to-door sales and telemarketing sales above \$50 and restrict consumers and traders from contracting out of this right, but:

2.1 Support for maintaining and extending cooling-off periods

The survey of trader and consumer attitudes to cooling-off periods, discussed in Chapters 7–11, indicated broad support for using cooling-off periods to give consumers time to reflect on their decisions in an unpressured environment, and to ensure consumers are adequately informed about what they are buying.

Most traders accept the role of cooling-off periods in most categories that current legislation applies to, with the exception of retirement village contracts and building contracts.

There was criticism of cooling-off periods for retirement village and building contracts because such periods are rarely, if ever, used by consumers. For retirement villages and building projects, the process leading up to signing the contract is lengthy and consumers who want to withdraw generally do so prior to signing the final contract. That is, they withdraw before the cooling-off period commences.

Overall, consumers strongly support cooling-off periods, with 91 per cent believing they are an important safety net. A significant number of consumers also suggested cooling-off periods should be:

- longer, with 45 per cent advocating periods of 10 days or more
- extended to other goods and services and forms of selling, such as free seminars, used cars sold privately and real estate sold at auction.

Generally, support for using cooling-off periods to help consumers protect their interests appears to be increasing. Supporters argue that cooling-off periods significantly reduce detriment to consumers who make ill-considered decisions, without imposing substantial costs on traders or other consumers. They argue that cooling-off periods do not restrict consumer choice and generally impose only minor delays on transactions.

Cooling-off policies exemplify 'conservative paternalism' — they will do much good for people who act impulsively and cause very little harm (an unnecessary three-day wait) for those who do not act impulsively; thus, even conservatives who resist state intervention should find them appealing. (Camerer 1999, p. 10577, see also Camerer et al 2003, pp. 1239–1240)

This view is also supported internationally. For example, the United States Federal Trade Commission's analysis of the three business day cooling-off period for sales made away from business premises concluded, based on comments from interested parties, that the cooling-off period provides "substantial benefits to consumers without imposing unreasonable costs on sellers or others". (US FTC 1995, p. 54181)

Interest groups in Australia have supported similar arguments. The Australian Consumers Association (ACA 2006, p. 9), the Royal Automobile Association (RAA 2003, p. 5), and the NSW Council of Social Services (NCOSS 2005, p. 2) argued that the benefits of cooling-off periods for consumers are large and the costs to traders and others are relatively small, particularly traders who act ethically. This view is further supported by a survey of people acting as guarantors for business loans. Fifty-two per cent of those surveyed felt they would have benefited from a cooling-off period and only 31 per cent said they would not have benefited. (Lovric and Millbank 2003, para 5.41)

These views are not universal, however. Some question whether the costs of cooling-off periods are as low as supporters argue and whether, in practice, the benefits are as large as claimed. For example, preventing consumers from concluding purchases immediately has costs (Rizzo and Thaler 2007, p. 1) and cooling-off periods are not an adequate substitute for people thoroughly considering contracts before they enter into them (Parliamentary Joint Committee on Corporations and Financial Services 2005, p. 51 and Lawyers Conveyancing 2008, p. 2). In other cases, the costs imposed on traders may be large (VACC 2004, p. 1, Shakespeare Classic Line quoted in European Union Committee 2007, p. 20 and Christensen et al 2007, p. 229).

This research paper looks in detail at the justification for cooling-off periods, the costs they impose, and how they can be designed to maximise their benefits and minimise their costs.

“The justification for cooling-off periods”

3

Drawing on reports, consultations and announcements of consumer policy involving cooling-off periods, a substantial list of reasons emerges to justify why such policies are necessary. Usually, several reasons are given to justify each cooling-off period. These generally fall into three categories:

- issues about the use of high-pressure sales tactics or uneven bargaining power between sellers and buyers
- consumers making short-sighted or ill-considered decisions
- the need to allow additional time for consumers to obtain information on the product or service they have bought or the contract they have signed (Table 2).

Table 2 Reasons for using cooling-off periods

Characteristic of decision-making environment	Problems caused by that characteristic	Potential benefit from a cooling-off period
High-pressure sales techniques	In some markets, traders can put undue pressure on consumers to agree to buy a product or service that the consumer would not agree to if they were able to consider their choice without such pressure.	Cooling-off periods allow consumers time to reconsider, away from the high-pressure sales environment, whether they want to purchase the product or service.
Short-sighted or emotion-based decisions	It is often argued that consumers, for various reasons, make short-sighted decisions that they soon regret. Such decisions lock consumers into buying goods or services that they do not want or cannot afford.	Cooling-off periods give consumers time to reconsider whether these decisions are consistent with their long term preferences and to reverse poor decisions.
Lack of information: <ul style="list-style-type: none"> • not being able to inspect the goods • not understanding the contract • not being able to shop around and compare products and prices. 	In some markets, people do not have the opportunity to inspect a product, understand a contract or check the price and availability of alternatives before committing to a deal.	Cooling-off periods allow consumers to do more research, talk to others or seek advice and then change their decision if the product or service is not what they anticipated at the time they committed to the sale.

3.1 High-pressure sales techniques

Rash decisions as a result of high-pressure sales are a common reason given for introducing cooling-off periods. For example, in the second reading speech for Victoria's Introduction Agents Bill, one of the reasons given for introducing a cooling-off period was:

...to enable consumers subject to pressure sales techniques to withdraw from the contract after considered reflection. (Asher 1997, p. 85)

Similar comments were made in the parliamentary discussions for the Victorian Motor Car Traders (Amendment) Bill, NSW Motor Vehicle Legislation Amendment Bill and the NSW Funeral Funds Amendment Bill. (Pandazopoulos 1996, p. 1422, Obeid 2001, p. 18536 and Hodgkinson 2003, p. 4253)

Research discussed in Chapters 7–11 also revealed that a common issue for Victorian consumers was the use of high-pressure sales tactics on potential purchasers.

High pressure is not only the result of industry practice but can be exacerbated by the sales environment. For example, consumers who cannot walk away from the sale may experience other emotional pressures to commit to the sale, or may be in a vulnerable state and therefore more susceptible to high-pressure tactics (Box 1).

Box 1 Situations that compound the problem of high-pressure sales

Door-to-door sales

Door-to-door sales are regulated in many Australian and overseas jurisdictions and this regulation often involves cooling-off periods. Door-to-door sales have several characteristics that mean consumers can benefit from a cooling-off period. These characteristics include an inability to shop around (discussed below) and consumers being caught unprepared and unable to simply walk away from the salesperson (particularly if the salesperson is reluctant to leave without a sale). (US FTC 1995, p. 54184 and OCBA 2003, p. 3)

Sales at temporary locations

Door-to-door sales are not the only environment in which consumers can be more susceptible to sales pressure. Problems have also been found with high pressure sales when traders use temporary locations. In particular, sellers may "lure consumers to temporary locations with promises of 'free' items or services only to surprise consumers with high pressure sales pitches" (US FTC 1995, p. 54182). Consumers may also be under pressure to buy now, because they are told that the trader is only in their area for a short time (Parliamentary Joint Committee on Corporations and Financial Services 2005, p. 50). This pressure can be even higher if the consumer cannot leave because they are reliant on the trader for transport. The Victorian *Fair Trading Act 1999* recognises this. Its cooling-off period for contact sales explicitly covers purchases in which the consumer is dependent on the supplier for transport, although the Act does not cover other forms of seminar selling.

Emotional pressure to agree to a contract

In some cases, consumers can be put under considerable emotional pressure to buy a product or agree to a contract. The selling of some educational products has been criticised for this approach. It is also an issue with third party guarantors. Research by Lovric and Millbank argued that guarantors often felt they had no choice but to sign a contract and that such pressure could come from the borrower as well as the lender:

...pressure is one of the main reasons why guarantors sign, despite being advised [by a solicitor] against doing it. Such emotional pressure is also reflected in the reported cases. (Lovric and Millbank 2003, para. 3.59)

This pressure is increased if guarantors are not given time to consider the contract fully and the borrower is present when the documents are signed (Lovric and Millbank 2003, para. 5.36). The NSW Law Reform Commission subsequently concluded that a cooling-off period would help ensure that the guarantor's decision was not subject to undue pressure. (NSW Law Reform Commission 2006, para. 9.12)

Consumers in vulnerable situations

There are several examples of cooling-off periods that, among other things, help vulnerable consumers. For example, cooling-off periods for second-hand vehicles reduce the risk that inexperienced car buyers will be locked into a decision if they choose the wrong car or over-commit themselves.

Similarly, inappropriate tactics in selling products such as pre-paid funerals has been cited as a reason for introducing cooling-off periods in that industry.

This measure [a cooling-off period] is considered necessary in order to provide greater protection for those vulnerable elderly consumers and their grieving relatives who may find it difficult to avoid the temptation to buy a prepaid funeral service offered using high-pressure sales tactics.

While it is recognised that the overwhelming majority of persons engaged in the funeral industry operate in a highly ethical manner and with a suitable degree of sensitivity ... the tactic of approaching relatives at a cemetery and seeking to sign them up for a prepaid funeral is well and truly worthy of condemnation. However, a cooling-off period should provide consumers with an opportunity to get out of a prepaid funeral contract if they feel they have been pressured into making a hasty decision. (Hodgkinson 2003, pp. 4253-4254)

Using cooling-off periods to address the problems associated with high-pressure sales can be effective if consumers are inclined to reconsider their decision and cancel the deal if they no longer want to proceed. High-pressure sales are one area in which consumers are likely to recognise relatively quickly that they have made a poor choice. Often they have doubts once they are away from the high-pressure environment. They may even have doubts during the transaction but feel that the only way to stop the salesperson is to agree to the sale. This may not be universally true, as in some cases consumers may be reluctant to admit they made a mistake or be reluctant to take action to reverse a sale. (Haupt 2003, p. 1149 and Tootelian 1975, p. 61)

The availability of cooling-off periods may also change traders' behaviour. If traders face the prospect of a deal being cancelled, they may be less likely to coerce consumers into a sale. Without regulation, if traders know that consumers will respond to sales hype they are more likely to increase their use of such tactics to encourage more sales, and increase prices to take advantage of consumers' temporary perception that the goods have a higher value. Cooling-off periods, however, delay the consumer's decision until after the effects of sales hype have subsided, reducing the incentives for traders to engage in sales hype and also encouraging prices to fall. (Lowenstein et al 2000, pp. 34 and 36)

In addition, cancellation costs can have an important influence on the incentives for consumers to cancel and for traders to avoid the risk of cancellation. If the cost to consumers is too

high, they would be discouraged from cancelling. If the cost to traders is too low, they would have little incentive to avoid cancellation.

There are a number of related arguments about the balance of bargaining power and sales tactics that are used to support cooling-off periods and avoid consumers being locked into a poor deal. These include:

- situational monopolies
- allowing consumers to cancel if they have been subject to misleading and deceptive conduct
- deterring rogue traders.

Rekaiti and Van den Bergh, in an assessment of cooling-off periods in EU consumer laws, argued that one reason for introducing cooling-off periods is because traders may have temporary market power due to particular circumstances created by their sales techniques. This "situational monopoly" results in traders being able to extract monopoly prices because consumers wrongly believe there are no alternative suppliers or it would be excessively costly for them to seek an alternative supplier (Rekaiti and Van den Bergh 2000, p. 378). Such a belief has similar outcomes to high-pressure sales techniques and lack of information, as consumers do not shop around or make a considered decision.

While it has been argued that cooling-off periods can help deter misleading and deceptive sales tactics and discourage rogue traders (see, for example, European Union Committee (UK) 2007, para. 69), care should be taken in relying

on cooling-off periods to address such problems. Firstly, there is already general consumer legislation to address misleading, deceptive and unconscionable practices. It is not clear that this legislation is deficient in covering the few days or weeks in which a cooling-off period would apply. The consequences of misleading and deceptive sales practices may also take time to emerge and cooling-off periods cannot address issues that come to light after the specified period has expired.

Secondly, rogue traders are likely to disregard consumers' rights to cool off or mislead them about those rights, reducing the effectiveness of cooling-off periods, which are most effective if there is good will and support from the trader. It is possible that a cooling-off regulation may make it more difficult for money to change hands if payment is prohibited during the cooling-off period. This may deter rogue traders seeking to extract money quickly from consumers and disappear (one characteristic that makes rogue traders difficult to catch) (CAV 2006a, p. 8). There is, however, no guarantee that rogue traders would not continue to operate, deceive consumers about their cooling-off rights, take money before they are entitled to it, and disappear before the consumer can cancel the contract. If cooling-off periods can assist in reducing misleading or rogue activity then that would be an additional benefit. If such behaviour is the main problem, then there are likely to be more effective policy tools available.

The risk of high-pressure sales resulting in poor choices by consumers is greatest when:

- consumers do not expect to be approached by the trader and/or cannot walk away from the situation
- traders use moral pressure or try to create an obligation for reciprocity by, for example, providing free gifts
- the goods are unique (for example a used car) so that exactly the same product cannot be purchased elsewhere
- the goods are complex or unfamiliar so that the consumer has more difficulty relying on their own judgement
- the relationship between the trader and the consumer is not ongoing because the product is an infrequent purchase and/or the trader is not local
- the consumer is in a situation in which they are vulnerable or disadvantaged.

3.2 Short-sighted or emotion-based decisions

Consumers can make poor choices that they later regret when there is a divergence between their short-term and long-term preferences. For example, a person may get caught up in the excitement of starting their own business and sign a franchise agreement, only to realise when they are thinking more coolly that the business is not suited to their skills or will not generate the income they need. The franchising industry code gives a seven-day cooling-off period that enables people who have signed a franchise agreement to reconsider whether they really want to commit to such a business.

Behavioural economics provides a number of explanations for why people's short-term preferences (which drive their immediate decisions) can differ from their long-term preferences.

Availability bias — this is a behaviour in which consumers place too much weight on recent salient information (Choi and Pritchard 2003, p. 114). The effect of availability biases are often cited in the context of the share market, in which recent high-profile information can encourage investors to buy or sell stocks in a way that is inconsistent with their underlying value. Such a bias may also help explain why people are receptive to information provided by a salesperson using high-pressure sales tactics.

Hyperbolic discounting — this is a behaviour in which consumers place greater weight on short-term gains or losses and less weight on long-term gains and losses. It is often cited as a reason why people buy products or sign up to services they later regret and is used as an argument in favour of cooling-off periods. (Camerer 1999, p. 10577)

The time taken for the pleasure from the initial purchase to be offset by regret will, however, differ for different products and circumstances. In some cases, this may be a slow process. For example, it may take some time for the initial enthusiasm of a gym membership to wear off and the consumer to drop their attendance and realise they are not getting the value for money they expected. In other cases, such as decisions made in hot states (discussed below) the transition to regret may be very quick.

Hot states — consumers may make decisions in the heat of the moment that they soon regret (Benton et al 2007, p. 20), they may underestimate the degree to which intense feelings will dissipate (projection bias), (Lowenstein et al 2000, p. 3) and overestimate how long these states will last (hot to cold empathy gap). (Lowenstein as referred to by Camerer et al 2003, p. 1238)

Such biases can result in a car buyer over-committing themselves because they succumb to the excitement of choosing the car, without fully considering the consequences of the financial commitment. Another example is a person attending an investment seminar and buying expensive books or computer programs because of the excitement and anticipation of becoming wealthy, without looking objectively at the value or usefulness of the products they are buying. These biases can also be linked to overconfidence, in which people overestimate the deal they are getting from a particular purchase, another reason used to support cooling-off periods (PC 2008, p. 384 and Choi and Pritchard 2003, p. 114). Such states can, however, dissipate quickly.

It is worth noting that traders can exploit these traits, using them to put pressure on consumers to make poor decisions. It is often noted that in situations where consumers are more likely to make short-term decisions in hot or emotional states, they are more susceptible and traders are more likely to employ pressure sales tactics (Lowenstein et al 2000, p. 3). For example, a trader may claim that an offer is only open for one day to induce consumers to give in to heat of the moment feelings, by encouraging a fear that if the consumer waits to coolly consider the offer, the product will no longer be available. Similarly, traders may focus on emotional considerations, for example, selling a mathematics program to parents by telling them that their children are performing below the standard expected for their age and, therefore, encouraging them to act quickly without fully considering the benefits and cost of the product on offer.

There are other factors that may also heighten or intensify the divergence between a consumer's short term and long term focus. For example, consumers can be more susceptible to self-control problems if goods are purchased using a credit card (Bar Gill 2004, p. 25) because the desire for the product is separated from the need to meet the cost of that product. Poor decisions involving transactions linked to credit are likely to impose greater costs on consumers because they can be locked into an ongoing obligation to repay a loan, which they may not be able to afford. This issue is directly reflected in some cooling-off periods, for example, the cooling-off period for motor

vehicles in NSW only applies to purchase with linked credit arranged or facilitated by the dealer. (*Motor Dealers Act 1974* (NSW) see also Obeid 2001, p. 18536)

While all these behaviours have been argued as justifications for cooling-off periods, some are more conducive to being addressed through cooling off than others. Cooling-off periods are usually relatively short and the costs of such policies increase as the cooling-off period lengthens. Therefore, the behavioural traits suited to cooling off are those in which consumers are likely to change their minds relatively quickly. For example, purchases made in hot or emotional states are likely to be more transient than some other types of hyperbolic discounting.

The risks of short-term decisions being made that result in poor choices that the consumer quickly regrets are greatest when:

- the emotional state in which decisions are made is heightened or intensified by high-pressure sales tactics
- the emotional state that induced the short-term decision dissipates quickly
- the product is long lasting or the decision is difficult to reverse so the consumer is locked into the decision for a long time
- the transaction is linked to a credit contract and is large enough that there is a risk the consumer could become over committed.

Do poor choices warrant government involvement?

There is often debate about whether, even if consumers make poor choices, those poor choices warrant government intervention. For example, it may be argued that even if consumers' choices appear irrational they are still getting what they contracted for and it is, therefore, paternalistic for the government to intervene and allow such decisions to be reversed. Similarly, making mistakes is an important learning process and government intervention may stop consumers from learning from their past mistakes, worsening long term decision-making. It is important, however, to distinguish economic efficiency and social policy questions in such a debate:

Clearly, in cases where consumers are using decision-making techniques that systematically deliver goods and services that are inconsistent with them maximising their welfare in the long term, there is potential to improve market efficiency. The question about whether individuals should take responsibility for their own decisions is a value judgement and hence a social policy issue, rather than an economic efficiency question. (Cope 2007, p. 20)

There are a range of conditions, which, if all are met, indicate that consumer behaviours affecting decision making warrant government intervention because they reduce economic efficiency (Cope 2007, p. 20). These are listed below.

Are consumers getting what they really want? If consumers soon regret their decisions then they are choosing in a way that will not deliver goods and services that are consistent with their true preferences and there may be economic efficiency problems in the market.

Is the behaviour widespread? If it is, a significant proportion of consumers are choosing in a way that will not deliver goods and services that are consistent with their true preferences, so there may be economic efficiency problems in the market.

Will consumers learn from their mistakes? If not, the behaviour is not self-correcting and is likely to continue in the long term, possibly creating economic efficiency problems in the market. Consumers may have difficulty learning from their mistakes if their behavioural biases are so ingrained that at the time the decision is made they do not realise they are deciding in a way that will not deliver the goods and services they want. This is potentially the case with drivers that cause consumers to make short-term decisions in hot or emotional states (Rekaiti and Van den Bergh 2000, p. 377). Also, if the product or service is purchased infrequently, or technology is changing rapidly, learning processes may be slow or ineffective.

Does the behaviour systematically shift demand? If it does, the behaviour results in a systematic shift in the market away from an economically efficient outcome. If this bias in demand is combined with the other market features identified above, then there are economic efficiency problems in the market and there is potentially a case for government intervention.

In addition, there may be social policy reasons why government may want to provide cooling-off periods, particularly if poor decisions are causing considerable detriment that affects vulnerable or disadvantaged consumers.

3.3 Lack of information

As noted in Table 2 (p. 9), there are three main information problems often used to justify cooling-off periods:

- not being able to inspect the goods
- not understanding the contract
- not being able to shop around and compare products and prices.

These problems can have particularly severe consequences for vulnerable and disadvantaged consumers who may already have more difficulty obtaining and understanding information than other consumers. These problems are compounded when high-pressure sales tactics are used or the consumer is making emotional decisions with a short-term focus.

Not being able to inspect goods

Under normal circumstances, consumers are able to look at the product they intend to buy and judge whether it meets their requirements. For many goods, this will enable considerable information to be gathered on whether the product will meet consumers' expectations. It may also be possible for consumers to seek independent advice on the quality or suitability of the product before it is purchased.

It is not always possible, however, for consumers to inspect a product prior to purchase. Cooling-off periods for door-to-door sales and telemarketing are often justified on the basis that they provide the consumer with an opportunity to inspect the goods, once they have been received, to determine that they meet their description and are of the quality expected. (Rekaiti and Van den Bergh 2000, pp. 380-381)

Similarly, consumers may not always have an adequate opportunity to seek independent advice. It is often argued that cooling-off periods for used cars and domestic residential property are justified because they provide the consumer with an opportunity to get an expert inspection of the car or house so they are fully aware of the quality of the product they are buying. The need for time to inspect second-hand vehicles, for example, has been an issue highlighted in discussions of cooling-off periods in Victoria (CAV 2006b, p. 20) and consideration of the introduction of a cooling-off period in South Australia. (OCBA 2004, p. 3)

While consumers benefit from such information, it is important not to overestimate the gains in some circumstances. Not all characteristics of a product can be observed through inspecting the product for a short period. Some characteristics (those associated with experience goods) require the consumer to use the product before its quality can be assessed, and may require the good to be used for some time. For example, it would take time to determine whether exercise equipment has the fitness benefits claimed by a door-to-door salesperson. Cooling-off periods are not suited to dealing with such issues. Similarly, it may be virtually impossible for consumers to determine whether some goods (called credence goods) meet the claims that were made. For example, using electricity from a particular supply would not provide the consumer with any additional information on whether that energy has been generated using environmentally-friendly technology. (Rekaiti and Van den Bergh 2000, pp. 385-386)

While a short delay may sometimes assist a consumer to obtain further information about a particular product or service, in other cases the cooling-off period may need to be unrealistically long for the necessary information to be collected, assimilated and used by the consumer to reverse their decisions. Short cooling-off periods are sufficient for consumers to speak to family and friends who have had similar experiences. They may also be sufficient to organise an independent inspection of the product such as having a roadworthy check conducted on a used car or a property inspected for termite infestation. However, more detailed and complicated inspections may take longer.

Commentators have raised questions about the capacity for cooling-off periods to allow for adequate information gathering in the following circumstances:

- timeshare properties, which may be located in a different country, so that “a ten or even fourteen day cooling-off period does not allow for a personal inspection of the particular property” (Rekaiti and Van den Bergh 2000, p. 387). This conclusion has been supported by other commentators, for example, Haupt. (Haupt 2003, p. 1150)
- insurance products, whose quality is only revealed once the insurance is called on (Haupt 2003, p. 1151). To accommodate such issues, cooling-off periods would need to be long and uncertain.

- private real estate, for which a three day cooling-off period may not be long enough for consumers to investigate any serious concerns they have about problems with the property. (Mericka 2006, p. 1)

There are also conflicting views about the extent to which cooling-off periods should allow consumers to not only inspect goods but also trial them. Research discussed in Chapters 7–11 clearly indicates that many consumers feel cooling-off periods should act as a trial period, allowing consumers to use and test the product before committing to the sale. Traders, on the other hand, strongly argued that cooling-off periods should not be used as trial periods.

While consumers would benefit from being able to test goods and unconditionally change their mind, there are reasons why setting up cooling-off periods as trial periods is problematic:

- a reasonable trial period would be considerably longer than current cooling-off periods, adding significantly to the uncertainty for traders subject to the regulation
- the cost to traders could be very high as a product that is returned after being trialed is no longer new and is, therefore, substantially reduced in value
- longer trial periods increase the risk that some consumers will abuse their cooling-off rights by taking the product and using it for a short time, with no intention of keeping the product permanently
- trial periods give consumers of regulated products (such as those bought from a telemarketer) significant advantages over consumers who buy a product from a regular store. Generally, the law does not require retailers to allow consumers to trial products at home and then return them if they simply change their mind.

Overall, while some traders may choose to offer money-back guarantees or generous returns policies that allow consumers to try a product before they are locked into the sale, the reasons outlined above mean that mandating such an obligation on particular industries or types of traders would have significant costs.

Not understanding the contract

A common reason cited for cooling-off periods is to give consumers time to understand the implications of the contract they signed. This may require time to read and consider the contract, reflect on its contents or seek further advice. This has been used as a justification for cooling-off periods in industries like:

- second-hand motor vehicles, in which young car buyers, in particular, may need time to read and understand the contract or to seek advice (Watkins 2000, p. 10589)
- pre-paid funeral services, for which it is often argued that the older consumers who usually buy these services and often commit considerable money from a limited budget, may need time to look over the contract, reconsider its terms and perhaps seek independent advice (Hodgkinson 2003, p. 4253)
- door-to-door sales — one of the justifications for the US regulation of sales made away from a permanent business premises is that the salesperson may not have fully disclosed the purpose of the contract. (US FTC 1995, p. 54181)

However, care is needed not to overestimate a consumer's ability to gather and assimilate information in a short period of time, particularly if this would require the consumer to identify and seek the service of a suitable expert.

- In its analysis of cooling-off periods for timeshare, the United Kingdom Parliament concluded that in situations in which the consumer agrees to purchase a timeshare property while they are on holidays there is likely to be insufficient time in a 14-day cooling-off period for them to return home, seek legal advice and then make an informed decision about whether to withdraw from the contract. (European Union Committee 2007, para. 78 and 203).
- For insurance contracts in the EU, which have a 30-day cooling-off period, specialised lawyers would be needed to explain the precise meaning of clauses and how they would affect the consumer:

“Even if the consumer is able to get this specialised information within a month, he must still process it and apply it to his particular situation. Insurance is typically bought to reduce the risk of uncertain future losses. It is unlikely that cooling-off periods will suffice to assess the value of the insurance policy in the case of an event which one hopes will never happen. (Rekaiti and Van den Bergh 2000, p. 388)”

- The Council of Social Service of NSW (NCOSS), in a response on cooling-off periods for prepaid funerals, argued that it is very difficult to organise consumer advice at short notice, particularly for disadvantaged consumers who need low-cost independent advice. NCOSS considered 30 days was the minimum needed to seek such advice and 60 days would be more appropriate (NCOSS 2005, p. 2). Parliamentary discussions on prepaid funeral agreements also noted that there may be situations in which people are secretive about such agreements and do not seek independent advice. (Merton 2003, p. 4262 and Souren 2006, p. 58)

Finally, a range of commentators argue that cooling-off periods are not as good as people having the time and opportunity to consider a contract before signing it (see for example, Parliamentary Joint Committee on Corporations and Financial Services 2005, p. 51 and Lawyers Conveyancing 2008, p. 2). Similarly, in Victoria, a shorter cooling-off period than in other states for contracts for residents entering a retirement village was justified on the grounds that the Victorian legislation has a greater focus on pre-contractual disclosure than other regimes. (CAV 2004a, p. 38)

Comparative shopping

There is some disagreement about whether cooling-off periods should be an opportunity for consumers to shop around and check that they have got the best deal. This has been advocated in areas like:

- unsolicited door-to-door sales in which the consumer does not initiate the contact and, therefore, does not have an opportunity to shop around
- real estate sales, particularly for property viewed on a Sunday, when other estate agents are not open, and it may be difficult to check if the price of the property is in line with market prices
- consumer credit regulation: in the EU, cooling-off periods are designed to provide consumers with an opportunity to seek information about alternative forms of credit, including comparing interest rates for different loans. (Gibbons and Schwartz 2007, p. 1)

Comparative shopping has, however, been criticised by some sellers. For example, motor car traders have argued that particularly for new motor vehicles, allowing cooling-off would make it:

...possible for a consumer to sign a contract with one dealer and then proceed to bargain with other dealers. It would be unfair for dealers to negotiate a deal, with knowledge that a consumer has already signed a contract elsewhere. (VACC 2004, p. 10)

It should be noted, however, that, if the final price of a car is not quoted until the very end of the negotiation and consumers are not given sufficient information to compare deals until the contract is being signed, motor car traders may increase the incentives for consumers to use cooling-off periods to shop around. This is also recognised as a problem with some credit contracts in the EU. Gibbons and Schwartz argued that often the actual rate of interest is only disclosed to the borrower once the application is fully processed. (Gibbons and Schwartz 2007, p. 2)

Using cooling-off periods to allow consumers to shop around can cause problems if the value of the product falls. It may be an issue in a falling real estate market, in which the cooling-off period (unless very limited) could be used by the buyer to negotiate a lower price. It may also be an issue with products like new cars. In a submission, the Victorian Automobile Chamber of Commerce noted that “a vehicle is no longer considered new once it has been registered”. (VACC 2004, p. 10)

However, such issues can often be overcome in the design of the cooling-off period. For example, in setting its length, two issues to consider are whether the buyer can take possession of the product during the cooling-off period, and whether there is a charge to the buyer if they wish to cancel the contract. In the case of cooling-off periods for financial products in Australia, the amount to be repaid if the investor cancels the contract is the current market value of the product, so the holder bears the investment risk and enjoys any reward that occurs during the cooling-off period (Painter and Tearle 2003, p. 3). In the new car case noted above, the problem of falling value can be avoided if the trader retains the vehicle and it is not registered until after the cooling-off period expires.

Overall, allowing consumers to shop around during the cooling-off period can significantly improve competition in those markets in which traders do not freely disclose the final product price up front. Competition only works well if consumers have full information about key product features, such as price, and can readily compare the alternatives offered by different traders. If the market fails to provide this information early in the sale process, a cooling-off period may help ensure consumers are fully informed and can compare competing products.

The greatest potential for the redress of problems associated with a lack of information in a very short period are when:

- consumers do not have the opportunity to inspect the product or compare prices or products until after it has been purchased, and the characteristics that are important or the availability of alternatives can be easily observed in a short period
- consumers will have the opportunity to adequately inspect the product during the cooling-off period
- consumers are likely to actively reconsider a contract in the time provided for the cooling-off period and seek expert advice if needed
- if expert advice is needed that advice is easy to obtain.

3.4 The size of the benefits

Whether the benefits of a cooling-off period are likely to be significant will depend on whether the market of concern exhibits one or more problems identified above as being suited to resolution through a cooling-off period. For these benefits to be significant, it is also necessary for the identified problems to be generating a significant level of consumer detriment.

In addition, for these benefits to be realised it is also necessary for consumers and/or traders to change their behaviour in response to the cooling-off period. While anecdotally many argue that cooling-off periods have important benefits, there may be cases in which they do not achieve the expected level of behavioural change. There can be barriers to behavioural change. For example, if consumers justify their decision after the event rather than admitting they made a poor decision, they may not take advantage of a voluntary opportunity to change their mind (Ramsay 2008, p. 9). Similarly, people may interpret their behaviour as deliberate decision-making even if it is based on emotion. (Lowenstein 2000, p. 427)

It has also been argued that cooling-off periods may make consumers less cautious and increase the number of bad decisions, if consumers overestimate their ability to revisit the contract and reverse their decision during the cooling-off

period (Mulholland 2007, p. 20). In research discussed in Chapters 7–11 introduction agents noted that the cooling-off period gave clients comfort and they were more likely to commit because they knew they had time to reconsider their decision.

Furthermore, the circumstances of the sale need to allow for the decision to be reversed. It has been argued in relation to the EU consumer credit directive that a cooling-off period does not effectively allow for decisions to be reversed, because in addition to the credit contract, the consumer has often committed to purchasing a particular product, for example a car, with that money borrowed. If the consumer changes their mind about the credit they will not necessarily be able to reverse the related purchase and therefore, in practice, have little alternative but to continue the loan. (Gibbons and Schwartz 2007, pp. 1–3)

Other barriers to consumers exercising their right to cool off include traders hindering consumers' efforts to exercise their cooling-off rights, consumers feeling embarrassed or uncertain, and a lack of knowledge about their rights making consumers less confident in taking action to cancel a purchase. Forty-four per cent of Victorian consumers feel they do not know enough about cooling-off periods to feel protected, a smaller group (29 per cent) feel that it is too hard to cancel a contract even if they have a cooling-off period and 25 per cent feel uncomfortable about exercising their cooling-off rights (see Chapters 7–11).

Finally, the design of the cooling-off regulation can have a significant impact on its effectiveness (see Chapter 5), as does consumers' access to remedies. If the costs of seeking redress are disproportionately high then consumers would be reluctant to make use of their rights and there would be little incentive for traders to comply with their obligations. (Rekaiti and Van den Bergh 2000, p. 392).

Overall, consumers are most likely to benefit from cooling-off periods in markets in which:

- there is limited time between the commencement of the transaction, for example, when the consumer and trader start negotiations or discussions, and when the contract is signed. If this period is very short, consumers do not have enough time to reflect on the product or service and withdraw before the contract is signed.

- consumers are making extremely short-sighted decisions because they are under pressure or in a temporarily emotional state. Consumers may feel under pressure at the time of a sale because of the circumstances of the sale, for example, if they cannot walk away, or because of the selling practices of the trader.
- it is likely that consumers would change their mind or new information would come to light during the cooling-off period. If problems or information do not emerge until long after the product is purchased than a cooling-off period would have few benefits.
- cooling-off periods are likely to encourage traders to change their behaviour in a way that minimises consumer detriment.

“The costs of cooling-off periods”

4

Cooling-off periods can have considerable benefits. Unlike other forms of consumer regulation that impose conditions on the types of goods and services sold, or those who sell them, cooling-off periods retain consumer choice and do not directly affect the range of products on offer. Recognising that cooling-off periods do not restrict consumer choice, many commentators claim they impose few costs on consumers or traders. However, this view is not universal. The main costs noted are:

- cost of delays in transactions
- administration and compliance burdens on business
- the moral hazard of consumers abusing their cooling-off rights.

4.1 Delays in transactions

Cooling-off periods often delay transactions. Consumers who continue with the transaction regardless of the cooling-off period — whether their decision is rational or irrational — are disadvantaged to the extent that the delay reduces the benefits of their purchase. In addition, consumers may be deterred from purchasing the product or service because of the delay of the cooling-off period. This also carries a loss. Cooling-off periods are most valuable when the loss due to errors is large, and the loss of benefits from delay is small. (Camerer et al 2003, p. 1239)

Sometimes these delays are of little or no consequence, particularly if there are natural delays before a consumer can enjoy the product, for example, if there are other approval or registration processes required. (Lowenstein et al 2000, p. 36)

In other cases, delays may impose sizeable costs on consumers and traders.

- If consumers need to progress a transaction quickly, for whatever reason, then the delay of a cooling-off period can impose costs. For example,

...a country person who needs a second-hand vehicle but does not want, or cannot afford, the additional time, expense and inconvenience of having to spend several days in the city or a regional centre waiting for the cooling-off period to expire before being able to take possession of a vehicle. Another example may be a person who needs a vehicle because it is their only means of getting to and from their place of work, such as a shift worker. (OCBA 2004, p. 8)

- Submissions to the inquiry into cooling-off periods for guarantors noted that such delays can frustrate parties to the contract, particularly if the money is required immediately. The NSW Law Reform Commission, conducting the review, noted it was important to ensure cooling-off periods were not too lengthy, since excessive contract delays could result in lost business opportunities. (NSW Law Reform Commission 2006, paras. 9.10 and 9.12)
- It was claimed, in the context of Parliamentary debate on reducing the cooling-off period in the NSW *Fair Trading Act* from 10 days to five days, that people now expected to be able to receive products and services more quickly and many would become impatient with even a five-day cooling-off period.

Research discussed in Chapters 7–11 of this report revealed that traders believed delays of more than three days would adversely affect real estate and used car traders. They believed delays of more than 10 days would have an adverse effect on other industries. Participating traders also noted that, in the real estate market, taking properties off the market during the cooling-off period could disrupt the sales process and delay the sale, imposing costs on the vendor.

It is likely that if cooling-off periods impose costs on traders, these costs would be passed on to consumers in higher prices. (Rekaiti and Van den Bergh 2000, p. 383)

4.2 Administration and compliance burden on business

Cooling-off periods usually impose at least some costs on business – the costs associated with notifying consumers of their cooling-off rights and the costs of keeping necessary records.

- In the context of cooling-off periods for motor vehicles in NSW, it was noted that the costs to traders included holding stock not available for sale, holding trade-ins (tying up display space and working capital), delays accessing payment, and loss of sales opportunities if the consumer decides not to buy the car. Dealers also claimed they faced additional financing and staffing costs, lost advertising costs, and lost commissions. It was suggested by some motor trader groups that if a sale was terminated, five per cent of the purchase price would be needed to recover the dealer's costs. The NSW Government concluded, however, that compensation of the lesser of \$250 or two per cent was appropriate. (Obeid 2001, p. 18544)
- Under distance selling regulation, even when buyers need to pay the cost for goods to be transported back to the seller, the seller may still face the cost of “having to inspect and repack the rejected good again and also, in many cases, the good then has the value of a used item instead of a new one.” (Haupt 2003, p. 1150)

In many cases, the costs associated with these obligations will be low. A US study of the cooling-off period that applies to sales at home concluded that these regulations do not have a significant impact on small business and

involve only minor printing costs (US FTC 1995, p. 54181). The Council of Social Service of NSW argued that for a product like prepaid funeral services there are few costs associated with cancellation after a short cooling-off period as there is no loss or damage to any product and the loss from establishing the contract is minimal. (NCOSS 2005, p. 2)

Whether costs are low depends, however, on the specific obligations in the regulation. It has been claimed that some cooling-off periods impose significant risks and costs on businesses or disadvantage some businesses relative to their competitors. Industry submissions on cooling-off periods for the UK timeshare industry argued that “the right to withdraw had led to the disintegration of the timeshare industry and the emergence of holiday clubs.” (European Union Committee 2007, para. 70)

A US study of banking services also claimed that compliance costs and risk were shrinking the range of products banks offer:

Especially where the provision of cooling-off periods was concerned, severe sanctions were imposed on banks even for innocent errors. “If, for instance, a bank calculated the three day right to withdrawal incorrectly, the customer was entitled by law to an extended right — even up to three years — to rescind the loan.” Concerned about such high risks, banks decided to leave the loan market. (Rekaiti and Van den Bergh 2000, p. 382)

The Commonwealth Office of Regulation Review, in a submission on the regulation of direct marketing, argued that a mandatory cooling-off period would put direct marketing at a disadvantage to other forms of retailing, particularly as it would slow the delivery of low-cost items. (ORR 1995, p. 5)

Again, such costs not only affect businesses. Additional business costs are also likely to be reflected in high prices and, therefore, will affect consumers.

4.3 Moral hazard

Finally, there is also a risk that cooling-off periods may be abused by consumers (Haupt 2003, p. 1149). Such abuse could involve a consumer buying the product with the intention of using it during the cooling-off period, then returning it to the trader

before that period expires; or committing to the purchase of several similar products and using the cooling-off period to decide which one they will retain. Less opportunistically, consumers may simply take less care with their purchases because of the availability of the cooling-off period. All these behaviours, however, increase the risk to traders, even ethical traders not using high-pressure sales tactics, and would potentially be reflected in higher prices to all consumers.

While such behaviour is a risk, in many areas it does not appear to be a significant problem in practice. In some cases, it has been shown that cooling-off periods do not substantially increase the rate of cancelled contracts, though they may still change the behaviour of traders – reducing the incidence of traders pressuring consumers to make rash or poor decisions. For example, data from a door-to-door sales company was used to study the impact of the US Federal Trade Commission cooling-off regulation. That research concluded:

The FTC cooling-off rule is not a panacea for curtailing door-to-door selling abuses. However, the rule helps greatly by enabling the purchasers to have a change of mind with impunity and by affording consumers with some protection from the high pressure, mountebank door-to-door operator whose goal is to make a sale and then quickly depart with a legally binding contract in hand. The rule does not appear to encourage customer cancellations as many door-to-door sellers initially argued it would. There is a strong likelihood that direct sellers are actually assisted by the cooling-off provisions, since the customer's right to cancel is a risk reducing aspect of the sales presentation. (Shanklin and King 1977, p. 105)

If it is assumed that the company that agreed to participate in this study already used ethical sales practices prior to the introduction of the regulation, then this result indicates that the introduction of cooling-off periods did not stimulate abuse by consumers.

In addition, many cooling-off periods, particularly those involving large expensive products for which the cost to the trader of cancelling the contract is greatest, charge consumers who exercise their cooling-off rights. Such charges significantly reduce the incentive for consumers to exploit their right to cool off. (Rekaiti and Van den Bergh 2000, p. 382)

“*Design features of cooling-off periods*”

5

For cooling-off periods to be effective, they need to target a problem suited to being solved by cooling off. They also need to be well designed, to efficiently allow consumers to benefit from being able to reverse poor decisions without imposing excessive costs on traders or consumers who are happy with their choice. There are seven key design features that should be considered for any cooling-off period:

- length of cooling-off period
- whether the consumer can take possession of the goods during the cooling-off period
- what the process should be for the consumer to activate their right to cool off
- whether there should be a fee or charge paid by consumers who wish to exercise their right to cool off
- how linked contracts, such as credit contracts, should be treated if the consumer decides to cool off
- whether the cooling-off period can be waived and, if so, under what conditions
- what information the trader should be required to provide consumers about the cooling-off period and what should be the consequences of failing to provide that information.

The following discussion outlines the issues that should be considered when designing cooling-off periods.

5.1 Length of cooling-off period

The appropriate length of a cooling-off period may be affected by the problems it is attempting to solve and the cost of delaying transactions. The following issues are relevant to consider:

- if high-pressure sales are a problem, the time needed for consumers to extricate themselves from the high-pressure environment and reconsider their decision
- if short-sighted or emotion-based decisions are a problem, the time it takes for consumers to change their state of mind and for them to reconsider their decision with a more long-term focus
- if lack of information is the problem, the time it takes for consumers to collect, consider and respond to that information, taking into account whether the consumer simply needs to take possession and inspect the goods, review the terms of the contract, seek expert advice or shop around to identify the availability and price of alternative products and services.

As noted by guarantors, reported in Lovric and Millbank (2003, para. 5.42), awareness is not enough. People need time to consider the consequences of their decisions. Shorter cooling-off periods may deal with high-pressure sales tactics, the need to check if a product, once delivered, fits the description provided by the seller (as long as those characteristics are readily observable) and to reconsider rash decisions made in temporarily hot states. Longer cooling-off

periods may be needed if consumers need to seek expert advice, use the product to determine if it is consistent with the description provided by the seller, or if it is expected to take some time before the consumer realises they have made a mistake and want to reverse their decision.

If cooling-off periods are available in a range of industries, the appropriate length may also be affected by the need to avoid confusion and complexity for consumers and traders. Consistency across different schemes may make it easier for consumers and traders to understand their rights and obligations.

While there is no theoretical maximum limit for a cooling-off period, it is possible that, in some cases, the time needed for consumers to realise and correct their mistakes would make using a cooling-off period impractical. The critical issue for the viability of a cooling-off period is whether it is possible for consumers to correct poor choices within a timeframe that does not impose unreasonable costs or uncertainty on industry or other consumers. The costs associated with delays in transactions, including the costs such delays impose on traders, were discussed in Section 4.1.

5.2 Taking possession of goods

Cooling-off period schemes sometimes allow consumers to take possession of goods, and sometimes they do not. For example:

- the UK Distance Selling Regulations give the consumer the right to cancel a contract and obtain a refund (minus costs for delivery), for whatever reason, within seven working days from the date that the consumer received the goods (CAV 2004b, p. 26)
- telemarketing agreements in Victoria can be cancelled within 10 days of the consumer receiving the agreement documentation (*Fair Trading Act 1999* (Vic) s. 67H), regardless of when the goods are received
- for second-hand motor vehicles, there is a three-day cooling-off period that commences when the agreement is signed (*Motor Car Traders Act 1986* (Vic) s. 43). Whether the consumer can take delivery without waiving their right to cool off is at the trader's discretion.

The decision about whether the consumer should be able to take possession of the goods, or the trader should commence delivery of the services during the cooling-off period, depends on the purpose of the cooling-off period and the cost to the trader of returning such goods if the consumer decides to exercise their cooling-off rights.

If the reason for the cooling-off period is to allow the consumer to inspect the goods, to ensure they meet the description and quality presented by the trader, then the consumer will need to either take possession or have ready access to the goods during the cooling-off period. This, however, increases the risk that the goods could be damaged and, if they are used, their value could be reduced considerably. Thus, it is not always appropriate for the consumer to take possession of the goods during the cooling-off period.

In addition, allowing consumers to take possession of the goods increases the risk that some consumers may abuse their cooling-off rights, agreeing to the sale with the intention of using the goods during the cooling-off period and then returning them. This risk may be reduced by imposing a cost on consumers for exercising their right to cool off.

In other cases, taking delivery of goods during the cooling-off period may make the contract more difficult and costly to reverse. This is the case with many services, which cannot be returned once they are provided. It was also raised as an issue in the context of cooling-off periods for consumer credit in the EU. In this case, it was argued that not supplying credit until the cooling-off period expired would solve the problem of consumers spending borrowed money as soon as they received it, then having no practical way of paying it back if they wanted to cancel the contract. (Gibbons and Schwartz 2007, p. 3)

Overall, if the purpose of allowing cooling-off periods is for consumers to inspect the goods, it may be necessary for them to take delivery during that period. This may not always be practical, however, if it would significantly devalue the goods or substantially increase the risk of some consumers abusing their cooling-off rights. If these risks are high and a key reason for the cooling-off period is to allow the consumer time to inspect the goods, an alternative means of providing access to the goods may be needed (in the case of motor vehicles, for example, the consumer can test drive or view the vehicle at the sales premises), or a cooling-off period may not be the best method of achieving the policy goal.

5.3 Process for cooling off

Broadly, the processes for cooling off generally require the consumer to notify the trader in writing and then post, fax or deliver the notification prior to expiry of the cooling-off period. Traders are often required to provide information to the consumer on the form. Such notification should be part of the agreement documentation.

The cancellation process must not be so onerous that it discourages consumers from exercising their right to cool off. At the same time, the process must make the date the right is exercised sufficiently certain to avoid disputes about whether the consumer exercised their rights within the designated period.

5.4 Fee for exercising cooling-off rights

There is some debate about whether consumers should be charged a fee for exercising their right to cool off. In practice, there is often no fee or the fee is relatively small. The following are examples from Victorian legislation:

- there is no charge for consumers wanting to exercise their cooling-off rights for contact sales or telemarketing agreements and the consumer is entitled to have any money paid returned. The trader may, however, charge for any goods that have depreciated in value due to damage caused by the consumer. (*Fair Trading Act 1999* (Vic) ss. 65, 67, 67J and 67L)
- if a resident cancels a residential contract for entry into a retirement village they are entitled to the return of all money paid under the contract, except for \$100 or 0.2 per cent (whichever is the greater) of the ingoing contribution paid. (*Retirement Villages Act 1986* (Vic) s. 24)
- if a building owner cancels a building contract, the builder is entitled to a fair price for any work carried out. The owner is entitled to have all other money returned except for \$100 and any out-of-pocket expenses incurred by the builder. (*Domestic Building Contracts Act 1995* (Vic) s. 34)

- if a consumer cancels a contract with an introduction agent, they are entitled to have all money refunded except for the lesser of \$50 or 10 per cent of the total amount paid under the agreement. (*Introduction Agents Act 1997* (Vic) s. 30)
- if a consumer cancels a contract for a used car purchased through a licensed second-hand car dealer, the vendor can retain the greater of \$100 or one per cent of the purchase price. (*Motor Car Traders Act 1986* (Vic) s. 43)

They do, however, still impose a cost on consumers that may discourage some from exercising their rights, reducing the effectiveness of the cooling-off period (see, for example, European Union Committee 2007, para. 72). In Victoria, traders often do not charge a fee for cooling off even if they are entitled to, because the administration costs of charging for cooling off can be higher than the fee itself. The exceptions are introduction agents and industries in which the trader has out-of-pocket expenses such as building and used car sales (see Chapters 7–11 of this report).

In addition, if traders are fully compensated for any costs they incur if a consumer exercises their cooling-off rights, including the costs of conducting the sale, there would be few incentives for traders engaging in high-pressure sales tactics to change those tactics. Other traders would have few incentives to ensure consumers had an adequate opportunity to understand contracts or obtain information on products and services before they committed to a sale, and not to exploit situations in which consumers were inclined to make rash or hasty decisions.

On the other hand, any uncompensated costs to traders of consumers exercising their cooling-off rights are likely to be recouped by higher product prices, a cost which all consumers would bear. In addition, in some industries, if there is no cost to consumers for cooling off, there is more risk that some consumers could exploit the right to cool off (as discussed previously in section 4.3). This is likely to be one reason why the EU Consumer Credit Directive requires that a consumer who cancels a loan agreement must pay the money back with interest, as this is an area that could be more readily subject to abuse by borrowers. It has been noted, however, that this approach reduces the incentive for the lender, particularly a predatory lender, to inform the borrower of their cooling-off rights. (Gibbons and Schwartz 2007, p. 2)

Overall, a balanced charge for consumers who exercise their right to cool off is likely to be low compared with the value of the goods, and would

not completely offset all the costs to traders of consumers exercising their rights. Such a charge would not discourage consumers from exercising their rights, would still provide incentives for traders to change their behaviour, and would discourage consumers from abusing the right to cool off.

5.5 Treatment of linked contracts

The likelihood of linked or related contracts needs to be considered in the design of the cooling-off period and whether cooling off is the appropriate policy response. As noted earlier in the context of credit regulation in the EU, the ability of the consumer to cancel a related contract may constrain their ability to take advantage of the cooling-off period. In some cases, for example if one supplier negotiates both the credit contract and the contract to supply goods, it may be possible to address this issue in the design of the cooling-off period. Cooling-off regulation for second-hand vehicles requires that if the consumer cancels the agreement to purchase the car, any linked credit supplied or facilitated by the trader is also automatically cancelled.

This issue is more difficult to address if there is no relationship between the suppliers of the two products or services.

5.6 Waivers

Waivers provide an opportunity for the consumer to decide to forgo their right to cool off if they want to act on the contract or agreement immediately. This may be useful if a fast transaction is needed and the costs of delay are large.

In practice, however, waivers are rarely used in any sector other than used cars. Within the used car industry, their use 'varies considerably, from rarely (typically in regional areas) through to 30 to 40 per cent of purchases.' (see Chapters 7–11 of this report)

In addition, there is considerable debate about whether waivers should be included in a cooling-off period. The main concern is that some traders may put pressure on consumers to waive their rights, rendering the cooling-off

period ineffective. Similarly, if the waiver is simply included in the paperwork, the consumer may disregard it and automatically sign it at the same time they sign all the other forms.

Complaints and enquiries data of CAV indicates that not all consumers understand what they are being asked to sign when they are presented with a waiver form, or what the consequences are of signing it. (CAV 2006b, p. 20)

In some cases, these risks may be overcome by subjecting the waiver to conditions. To waive the cooling-off period for residential property and domestic building contracts in Victoria, consumers must obtain legal advice. The South Australian discussion paper on cooling-off periods for second-hand vehicles also questioned whether consumers who wanted to exercise their right to waive the cooling-off period should be required to consult a third person (perhaps a Justice of the Peace), or complete and sign a questionnaire that outlines any risks or disadvantages (OCBA 2004, p. 9). These options are, however, potentially complex and costly.

While waivers may reduce the costs to consumers or traders if there are benefits in exercising a deal immediately, they may be accompanied by significant risks, particularly in industries in which undue pressure from the trader is already a problem. Research discussed in Chapters 7–11 of this report indicated that in the used car industry, consumers usually do not have an opportunity to fully consider whether they want to waive their rights to cool off, as they are often not informed that they are signing a waiver until they come to pick up the car.

While it is possible to set up arrangements that counteract such pressures, their cost is likely to add significantly to the cost and complexity of the regulation. Such conditions would only be warranted for large purchases (such as residential property) where the losses from poor decisions are also potentially high.

5.7 Traders' obligations to inform consumers

Two aspects of information requirements are relevant to cooling-off periods. Firstly, there are obligations on traders to inform consumers about their cooling-off rights. Secondly, in some industries the penalty for not meeting other information requirements is an extension of the cooling-off period.

The details of the obligations to inform consumers about their cooling-off obligations vary between cooling-off schemes. There may also be penalties, most often an extension of the cooling-off period, if these obligations are not met.

- If the front page of a door-to-door sales contract does not inform the consumer of their right to cancel the agreement, the cooling-off period is extended from three days to six months. (*Fair Trading Act 1999*, ss. 61 and 63)
- If a retirement village contract does not include a conspicuous notice of the right to rescind the contract, the cooling-off period is extended from three days to six months after the consumer becomes aware of the breach. (*Retirement Villages Act 1986*, s. 42)
- If a contract for residential property does not clearly notify the purchaser of their cooling-off right, the purchaser can rescind the contract any time prior to taking possession of the property or receiving rents or profits. (*Sale of Land Act 1962*, s. 31)

The main issues that arise in relation to the provisions of such information are whether:

- the obligations impose an administrative burden on traders
- the way information is provided informs, or confuses, consumers
- the complexity of the obligations result in a risk that traders inadvertently breach their obligations, significantly increasing their business risk.

It is important that a balance is reached between protecting the rights of consumers and not imposing unfair or unnecessary burdens on business. If disclosure provisions are poor, or there are no consequences for not informing consumers of their rights, then the effectiveness of the cooling-off period would be reduced significantly.

Consumers not being aware of their cooling-off rights is a common problem, which was highlighted in research discussed in Chapters 7–11. The research noted that consumers' awareness of the details of cooling-off periods is limited. A third of respondents were unaware of the cooling-off period when they purchased a product covered by such regulation. In addition, the Consumer Law Centre Victoria, in a case study report prepared for the Royal Automobile Club of Victoria (RACV), noted that lack of community awareness is a significant problem (CLCV 2004, p. 15). Similar issues have been raised directly with the RACV by consumers calling their motoring advice service (Pullen 2004, p. 34),

and a NSW survey indicated that in the context of residential property purchases, only a third of buyers knew that the five-day cooling-off period was their last chance to change their mind. (NSW Department of Commerce 2007, p. 7)

In addition, consumers may sometimes believe they have cooling-off rights when this is not the case. In Victoria, 57 per cent of consumers believe cooling-off periods apply to real estate bought at auction, 38 per cent believe they apply to mobile phones, 63 per cent believe they apply to new cars and 31 per cent to cars bought privately (see Chapters 7–11 of this report, conducted before cooling-off periods for new car sales were introduced). A survey conducted by the Victorian Automobile Chamber of Commerce and the RACV also indicated that half of new car purchasers incorrectly believe they have a cooling-off period (CAV 2006b, p. 19).

The way information is provided is also important. The Consumer Law Centre Victoria argued, for example, that:

In relation to used cars, the sale contract should include a bold statement which sets out the consumer's cooling-off right and the consumer's obligations in the event the cooling-off right is exercised (rather than simply relying on Form 7A) [the Notice of Particulars]. A cancellation schedule should also be provided together with the contract, in line with the requirements for contact sales agreements under the Fair Trading Act. (CLCV 2004, p. 20)

The way information is disclosed can make a significant difference to people's awareness and use of the cooling-off period. In Australia, the Federal Parliament's Joint Committee on Corporations and Financial Services report on the timeshare industry noted that a survey indicated twice as many people were likely to exercise their cooling-off rights if the notice disclosing their rights was prominent in the transaction's documentation (Parliamentary Joint Committee on Corporations and Financial Services 2005, p.58).

There also need to be significant consequences for traders not informing consumers of their rights, to provide adequate incentives for this information to be provided in a way that is useful and used by consumers. However, the cost to traders should not be ignored. Onerous or complex requirements for information provision can increase administration costs and the risk that traders will inadvertently breach their obligations.

A comparison of cooling-off periods for residential property sales in different Australian jurisdictions was critical of those that included complex, highly-specific disclosure requirements. The study argued that such requirements impose

significant costs on sellers who can technically breach their obligations inadvertently, generate considerable uncertainty, and open the system to abuse by buyers (Christensen et al 2007, p. 219). The study noted that these problems arose when the information requirements in the cooling-off regime are prescriptive and highly technical, for example, specifying what information is to be given to consumers, how that information should be printed, and the order the information is to be presented to the buyer for their signature. Less prescriptive approaches in Victoria, the ACT and Tasmania have not resulted in the same problems. (Christensen et al 2007, p. 230)

A balance is therefore needed to ensure information requirements are sufficient to be clear and informative, without imposing an undue burden on business or carrying a high risk of inadvertent breach. Also, if traders face real penalties or consequences for not informing consumers of their cooling-off rights, the regulation will tend to automatically encourage compliance and reduced consumer detriment. If consumers are aware of their right to rescind a contract, traders are more likely to treat consumers fairly, therefore reducing the problems consumers encounter without the need for consumers to exercise their right to cool off.

Using cooling-off periods to enforce other information requirements

In some industries, the cooling-off period available to consumers is extended not only if traders do not meet information requirements in relation to the cooling-off period, but also if other information requirements are not met. For example, if door-to-door sales people do not comply with their obligations on the time and duration of visits, the cooling-off period is extended from three days to three months.

This may be justified in situations in which the other information obligations assist consumers to understand issues relevant to their deliberations during the cooling-off period, such as the scope and obligations in the contract or the quality of the goods and services. In these cases, it could be argued that failure to provide such information means consumers need more time in the cooling-off period to obtain the information themselves.

In other cases, extending the cooling-off period may simply be used as a mechanism for allowing consumers to cancel the contract for failure to provide other information. In these cases, the information may not be related to the cooling-off period but the cooling-off process is a convenient way of facilitating a right to cancel the contract.

“Consistency in cooling-off periods”

6

In reviewing the use of cooling-off periods in Australia, one obvious feature is the frequency of inconsistencies in the characteristics of the transactions covered and the details of the way the cooling-off periods are applied. Section 3.4 of this paper noted the markets in which consumers are most likely to benefit from cooling-off periods. These included markets in which:

- there is limited time between the commencement of the transaction and when the contract is signed, so consumers do not have time to fully reflect on the product or service
- consumers are making extremely short-sighted decisions because they are under pressure or in a temporarily emotional state
- it is likely that consumers would change their mind or new information would come to light during the cooling-off period
- cooling-off periods are likely to encourage traders to change their behaviour in a way that minimises consumer detriment.

In practice, however, the markets in which cooling-off periods have and have not been implemented are not necessarily consistent with these market characteristics.

For example, while experience has shown that consumers rarely use cooling-off periods in sectors in which there is a long lead time between commencing the transaction and finalising and signing the sales contract, cooling-off periods are still common in areas like retirement village contracts and building contracts. As expected, in these sectors, cooling-off periods are rarely used because those who are likely to withdraw from the transaction do so before the contract is signed.

In addition, while cooling-off periods cover some sales techniques such as telemarketing and door-to-door sales, other similar sales techniques are not always covered. Free seminars are one example. Such seminars can involve consumers attending a function with little or no prior knowledge of the product that will be pitched. They are often given free gifts of food to make them feel obliged to give something back to the trader and the sales tactics used to encourage consumers to buy can be high pressure. However, such seminars are not covered by cooling-off periods, except where the trader has organised transport and therefore made it difficult for consumers to leave the seminar venue.

There is also considerable variation in the periods of time allowed for cooling-off periods in different industries and the time allowed for in the same industry in different states and territories. There does not appear to be a strong justification for many of these differences. The differences can, however, carry substantial costs.

From a business perspective, there are administration costs, particularly for national businesses with different obligations in different jurisdictions. For instance, if a product is being telemarketed from a national call centre, then the sales contract documentation would need to vary depending on where the consumer is located. Such differences also make it more costly and complex to train staff and increase the risk that the trader inadvertently breaches their obligations (see Chapters 7–11 of this report).

Similarly, Telstra argued in the context of door-to-door sales in Australia that:

The differences in each state and territory law add to the complexity and costs of ensuring compliance for organisations that conduct business nationally. Particularly, in areas that border between two states or territories, heightened compliance is required because of the differences in those laws in a potentially overlapping area.

Whilst in most cases it is practical to train staff on the legal requirements in their state and territory, from a process perspective, the need for different forms and training increases the complexity and cost of compliance. It also reduces the ability of national sales organisations to relocate resources or staff as demand requires, given the differing legislative requirements. (Telstra 2007, p. 25)

From a consumer perspective, inconsistency can make it difficult for consumers to understand and remember their rights. Consumers are more likely to be confused about when their cooling-off rights expire and what they need to do to exercise those rights. This may make consumers hesitate in taking action and reduce the effectiveness of cooling-off regulation (see Chapters 7–11 of this report).

“*Survey of traders’ and consumers’ understanding of cooling-off periods*”

7

7.1 Summary of findings – Traders

Consumer Affairs Victoria engaged Latitude Research to conduct a detailed quantitative and qualitative survey of consumer and trader experiences of cooling-off periods.

The research indicated that most traders have an awareness and understanding of their obligations to consumers regarding cooling-off periods, although the consumer research suggested some traders do not always live up to their obligations.

The research also indicated that consumers use cooling-off periods effectively in most categories that current legislation applies to, with the exception of retirement village contracts and building contracts. In these cases, a small cooling-off period at the end of a lengthy purchase process appears ineffective.

Most traders accept the role of cooling-off periods as a way to ensure the consumer has time to consider their purchase in a non-pressured environment and is adequately informed of what they are purchasing. However, many traders argue that cooling-off periods should not be considered trial periods (as many consumers mistakenly believe).

While some traders used cooling-off periods as a mechanism to help close a sale, many traders argued this was not helpful in the longer term because buyers were more likely to use

them, ultimately costing the business time. Some traders, particularly real estate agents and used car sellers, did not believe it was their role to inform consumers of the cooling-off period at all.

The survey indicated that, where available, waivers only tended to be used by used car salespeople.

For most traders, the cost to their business of consumers cooling off is limited to the time invested in the sale. For national traders, however, administration costs are an issue because of the inconsistency in legislation between states. For this reason, traders welcome harmonisation of cooling-off legislation.

The research indicated that some traders try to avoid their cooling-off period obligations or create barriers to cooling off. Traders that try to avoid consumers cooling off tend to be those whose products or services do not live up to further inspection by consumers.

Traders surveyed indicated they would welcome shortening of cooling-off periods but not lengthening. A cooling-off period longer than three days would adversely impact real estate agents and used car traders (although the impact on used car traders could be minimised by use of waivers). It was also claimed by survey participants that cooling-off periods longer than 10 days could have a significant impact for other traders, particularly where installation of products or services was involved.

7.2 Summary of findings – Consumers

Cooling-off periods have relevance to many Victorians. Four in 10 Victorians bought an item covered by a cooling-off period in the past two years and eight per cent of Victorians had exercised their cooling-off rights. Gas and electricity purchases are, by far, the most common purchase to which cooling-off periods apply.

Most Victorians have a general level of awareness of cooling-off periods but specific knowledge is more limited. In particular, inconsistent timeframes and conditions make it difficult for many consumers to know their specific rights in relation to certain purchases.

Cooling-off periods tend to play the greatest role in unsolicited sales, that is, door-to-door and telemarketing, yet one in three consumers were unaware of the cooling-off period at time of purchase. However, some high-pressure sales areas currently fall outside the current legislation. One such area is 'seminar selling' where potential consumers are enticed to a seminar to be sold usually high-priced products and services, without a cooling-off period.

The survey revealed there is considerable consumer confusion surrounding cooling-off periods. Some of the issues creating confusion for consumers include:

- what purchases cooling-off periods actually relate to
- the timeframe of the cooling-off period, and when it starts
- how to go about cooling off.

This confusion creates uncertainty and misinformation about the role of cooling-off periods. In the survey, many consumers argued that cooling-off periods should be longer than they are (especially for unsolicited sales) because they often use the cooling-off period to trial the goods or services.

Those consumers who have exercised their cooling-off rights felt empowered and had a positive perception of their experience, and would exercise their rights again in the future. Additionally, most consumers had not incurred any financial penalty when exercising their cooling-off rights.

“*Research objectives*”

8

The overall aim of the research was to provide policy-relevant information about the understanding and existing use of cooling-off periods by both traders and consumers. The research was designed to explore qualitatively and quantitatively:

- how often consumers exercise their cooling-off rights
- traders' and consumers' understanding of obligations in terms of cooling-off periods
- traders' and consumers' responses to cooling-off periods
- triggers and barriers to the use of cooling-off periods
- the effectiveness of current cooling-off periods in addressing potential consumer issues.

More specifically, for traders, the above research objectives were achieved by:

- identifying traders' policies and procedures for dealing with cooling-off periods, including:
 - exploring traders' awareness and understanding of cooling-off periods
 - understanding the role of cooling-off periods in the sale of traders' goods and services
 - exploring traders' understanding of their responsibilities when a consumer exercises their cooling-off rights
- uncovering the triggers of, and barriers to, traders complying with cooling-off periods
- identifying traders' views on cooling-off periods, including the:
 - appropriate length of time for cooling-off periods
 - associated detriment linked to the cooling-off period

- financial implications of cooling-off periods (whether exercised or not)
- use of waivers by traders to cancel cooling-off rights for consumers.

For consumers, the research objectives were achieved by:

- identifying consumers' awareness and understanding of cooling-off periods, including:
 - whether they knew they had a right to cool off and if so, how
 - whether they sought information about this and if so, where from
 - identifying reasons why consumers exercised (or did not exercise) their cooling-off rights, including the triggers and barriers involved in consumers exercising these rights
- exploring consumers' experiences when exercising their cooling-off rights, including:
 - the type of purchase and the circumstances that led them to exercise their cooling-off rights
 - the response from traders
 - whether any personal or financial cost was incurred in exercising the cooling-off right
 - whether they would exercise a cooling-off period (again) in the future
 - the perception of whether the cooling-off timeframe is sufficient or insufficient
 - what purchases they expect cooling-off periods to apply to.

In addition, we developed short individual case studies, from the consumer and trader perspective, that represented common scenarios of when cooling-off rights are exercised or not exercised.

“*Research methodology*” 9

9.1 Overview of methodology

Given the broad nature of the research objectives, both quantitative and qualitative research methodologies were used. There were three main phases to the research:

Phase 1: Consumer quantitative research

A total of 1,500 Victorian consumers were surveyed via Computer Assisted Telephone Interviewing (CATI). The aim of the quantitative component was to assess the awareness and incidence of use of cooling-off periods among Victorian consumers.

Phase 2: Trader depth interviews (qualitative)

This phase consisted of 22 depth interviews conducted with traders who sell goods or services to which cooling-off periods apply. The aim was to explore traders' awareness, understanding and compliance with cooling-off periods.

Phase 3: Consumer depth interviews (qualitative)

This consisted of 32 depth interviews with consumers who had or had not used their cooling-off period. The aim was to explore the experience of consumers when cooling-off periods were used, or when these rights were not invoked but should have been.

Some of the comments made during Phases 2 and 3 appear in this report in italics.

9.2 Phase 1: Consumer quantitative research

This survey was conducted on behalf of Consumer Affairs Victoria by Latitude Research.

Detailed methodology

A quantitative methodology was required to assess the incidence of cooling-off period usage for different purchases. As it was not known at the commencement of the study how often cooling-off periods were used, a large sample size was required to ensure adequate numbers of relevant *Purchasers* (had purchased within the categories within the past two years) and *Exercisers* (had exercised their right to cool off within the past two years) were included. Details of the actual sample sizes are discussed further in the following section. Computer Assisted Telephone Interviewing (CATI) was used because it is a cost-effective approach to contacting a random sample of Victorian consumers.

The sample

The quantitative sample of consumers was randomly selected from the general Victorian community aged 18 years and above (representative of gender, age and location, including whether the consumer was located in a metropolitan or regional area). A random selection of phone numbers were dialled and then a selection process of 'the person within the household whose birthday is next' was used to ensure the sample was random and representative. People who worked in legal areas or market research were excluded from participating in the survey.

9.3 Phase 2: Trader depth interviews

A total of 1,500 Victorians were surveyed. Within this sample, 600 were from a random sample, while the remainder were quota sampled to achieve adequate representation of *Purchasers* and *Exercisers*. The quota sample³ focused on any person who had made a 'purchase' that provided them with a cooling-off period in the past two years. It included:

- purchased goods or services (over \$50) as a result of door-to-door sales
- purchased goods or services (over \$100) as a result of telemarketing
- purchased real estate (except at an auction)
- purchased a used car from a motor car trader
- signed a domestic building contract for over \$5,000 in building work
- signed a residence contract for a retirement village
- signed with an introduction agency
- signed a gas or electricity contract.

The quota sample resulted in 859 *Purchasers* and 133 *Exercisers*.

The questionnaire

Respondents were advised prior to the survey that Consumer Affairs Victoria was conducting the research. The questionnaire took on average about 10 minutes to complete. Respondents were also asked if they were willing to participate in further research on cooling-off periods in the form of depth interviews. This was a valuable method of acquiring a participant pool for the consumer qualitative phase of the study (Phase 3). If they agreed to participate in the qualitative study, they provided their name, postcode and contact details for possible follow-up.

Fieldwork

Fieldwork was conducted between 30 June 2008 and 18 July 2008. This was at the same time as the trader depth interviews (Phase 2) but prior to the consumer depth interviews (Phase 3). The rationale for this was that the quantitative research was used to source some of the consumer depth interviews for the qualitative phase as well as identify some of the issues for further exploration. Fieldwork was conducted by Lighthouse Data Collection Pty Ltd, an independent data collection company.

Detailed methodology

Depth interviews explored traders' awareness and understanding of cooling-off legislation, and their perceived obligations and current behaviours in relation to these obligations. It also investigated the barriers and motivations relating to compliance with cooling-off periods, and explored any differences amongst traders. Interviews took about 45 minutes and were done during business hours. Prior to the commencement of the qualitative interviews, a discussion guide was developed.

Depth interviews were conducted at a time that was convenient to the participants. Face-to-face interviews were used where possible in metropolitan Melbourne. Telephone interviews were conducted with traders whose head office was outside the metropolitan area. All interviews were conducted by qualitative researchers between 4 July 2008 and 21 July 2008.

The sample

A total of 22 depth interviews were conducted in person or via the telephone with a range of traders in the following categories:

- door-to-door sales
- telemarketing
- purchase of real estate
- domestic building works
- used cars
- introduction agencies
- retirement villages.

Three traders were interviewed in each category, with the exception of introduction agencies in which four agents were interviewed. The interviews were conducted across a wide range of personnel within the organisations including the following:

- Production Manager
- Business Owner
- Business Manager

³ Quota sample refers to contacting an adequate number of consumers to achieve a pre-defined number (or quota) of *Purchasers* or *Exercisers*

- Sales Manager
- Sales and Marketing Manager
- Senior Salesperson
- Commercial Counsel
- Channel Sales Support Officer
- State Manager
- Chief Operating Officer
- National Operating Officer
- General Manager, Sales Division
- Managing Director
- CEO.

Sample recruitment

Respondents were recruited by a specialist recruitment company (Cooper Symons and Associates). As with all research, participants were guaranteed confidentiality of their responses and therefore this report does not identify traders who participated. All companies that participated in the research were offered a small cash payment to thank them. These incentives were either paid directly to individual participants or donated to a charity of their choice.

9.4 Phase 3: Consumer depth interviews

Detailed methodology

Depth interviews were used in this phase for a number of reasons. First and foremost, the nature of the research required that consumer experiences were explored in detail. The most appropriate method was to use depth interviews that allowed participants to freely respond to questions. Given the highly emotive nature of some of the purchases to which cooling off applies (for example, real estate, car sales, introduction agencies and door-to-door sales of learning programs) it was important the respondent felt comfortable discussing their situation, the purchase decision and the consequences that arose from it. Individual feedback and a depth of understanding was required to fully understand the individual situations in which cooling-off rights do or do not provide consumer protection.

Consumer depth interviews were conducted by telephone. All interviews were conducted by experienced qualitative researchers and were conducted between 21 July 2008 and 11 August 2008.

The sample

We conducted 32 depth interviews with consumers, seeking a mix of consumers who had:

- exercised their cooling-off rights for a purchase
- encountered problems in purchasing goods or services but did not exercise their cooling-off rights.

The majority of the sample was drawn from consumers surveyed during Phase 1 of the study (quantitative consumer phase). Other participants were consumers who had purchased products via door-to-door or telemarketing and contacted Consumer Affairs Victoria for advice, to make a complaint or to engage in dispute resolution. The sample also included consumers who contacted Consumer Affairs Victoria about issues they had with an introduction agency (the only category not included in the quantitative survey). A mixture of consumers from these categories were contacted and participated in Phase 3. Sampling was guided by the desire to target specific industries where people have reported difficulties.

The qualitative sample comprised the following:

	Total
Door-to-door sales (any purchase over \$50) – including gas and electricity	8
Telemarketing (any purchase over \$100) – including gas and electricity	12
Purchase of real estate (not auction)	2
Domestic building works (with contract)	-
Used cars	5
Introduction agencies	3
Retirement villages	-
Other	2
TOTAL SAMPLE	32

Table 1 Consumer qualitative sample

“Detailed findings – Traders’ perspective”

10

10.1 Traders’ overall view of cooling-off periods

It was evident that the traders were aware and knowledgeable of cooling-off periods, with all traders speaking spontaneously about their obligations. The only exceptions were retirement village operators and builders, who reported that cooling-off periods were largely irrelevant to their business.

Figure 1 displays the impact of cooling-off periods on different groups of traders. As shown, traders reported a spectrum of impacts ranging from no impact (retirement village operators and builders) through to some impact on door-to-door and telemarketing traders. This difference was largely due to the nature of the purchase process.

The extent to which categories of traders informed consumers varied considerably. Real estate agents and used car traders believed it was unnecessary

to inform consumers overtly because the information was in the contract, and providing the information was not their role. Door-to-door traders and telemarketers claim to inform consumers, although our consumer qualitative research showed this may not always be the case.

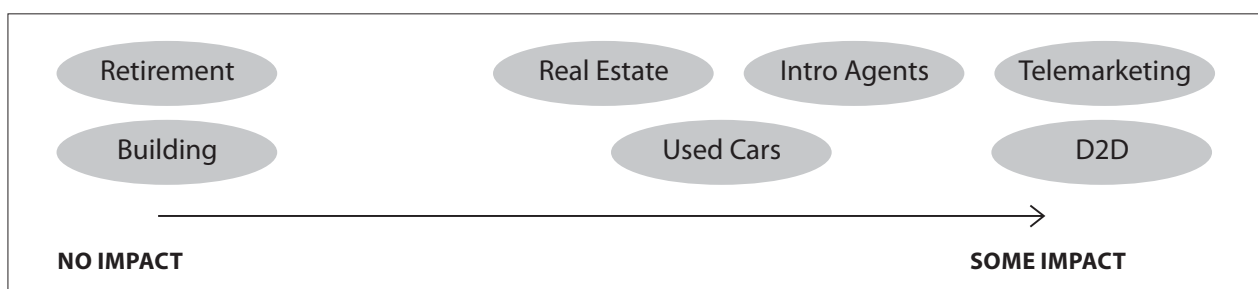
An unexpected use of cooling-off periods is as a sales tool. By describing the cooling-off periods as a mechanism for the consumer to change their mind, some traders use it as a ‘carrot’ to get consumers to commit by reassuring them they have time to reconsider. In such circumstances, a cooling-off period essentially becomes a trial period.

“It can reassure people of something which is sight unseen.”

However, many traders acknowledge this is a poor sales technique as it often costs them in the long run when consumers cool off.

“That’s a bad salesman.”

“It costs you in the end.”



Note: D2D = door-to-door sales

Figure 1 Impact of cooling-off periods on traders

CASE STUDY

A telecommunications company reported a cooling-off rate of 20 per cent when their sales teams were using cooling-off periods as a carrot during their sales pitch. After educating staff that this was an unacceptable sales approach, imposing unnecessary costs on the business, the cooling-off rate dropped to five per cent.

10.2 Examining specific industry perspectives

Retirement village operators and builders

The process for signing retirement village contracts makes cooling-off periods largely irrelevant. This is because under the *Retirement Villages Act 1986*, the minimum allowable time between receiving the residence documents and signing a contract is 21 days. Consequently, this gives the potential resident or their family adequate time to consider their purchase before signing the final contract. If they were going to cool off, they would do so in the 21 days prior to signing the contract. For this reason, some traders refer to 21 days as the cooling-off period, not the actual three-day cooling-off period that applies upon signing.

No trader reported ever having someone cool off in the three-day period after signing the contract, and therefore the three-day cooling-off period appears to have no impact on their business. However, most traders agreed that the 21-day period provides good protection for consumers:

"The 21 days is a good thing. It gives older people time to settle with themselves what they are going to do."

Furthermore, some contracts are signed with 'subject to ...' clauses (for example, subject to finance or subject to the sale of a house) that essentially offer an extension of the cooling-off periods.

All traders cite the 'reservation fee' or expression-of-interest payment consumers pay upon receiving the residence documents (for example, \$1,000–\$2,000) as being fully refundable prior to signing the contract.

The cooling-off period is also mostly irrelevant for builders as there is typically a lengthy process prior to consumers signing final contracts:

"[The] cooling-off period plays little role because they know the costs after the tender process."

"Really it's actually irrelevant, after they've been through such a process, for the cooling-off period to kick in when it does."

Figure 2 shows this extended process, starting from the initial sales consultation through to signing of the contract. As shown, steps such as initial quote, soil tests, finalising selections, drawings and preparation of the tender documentation are all required before the final contract can be signed. This prolonged process typically takes between 12 and 15 weeks to complete and precedes the five-day cooling-off period.

In this pre-contract process, around 20 to 25 per cent of consumers may 'pull out' of the purchase. Builders reported that when consumers pull out within that initial period, prior to the signing of the final documents, they are refunded their deposit less costs that may have been incurred. These costs can be significant as they may include soil tests, surveying, drawings, electrical consultation, colour consultations, and so forth.

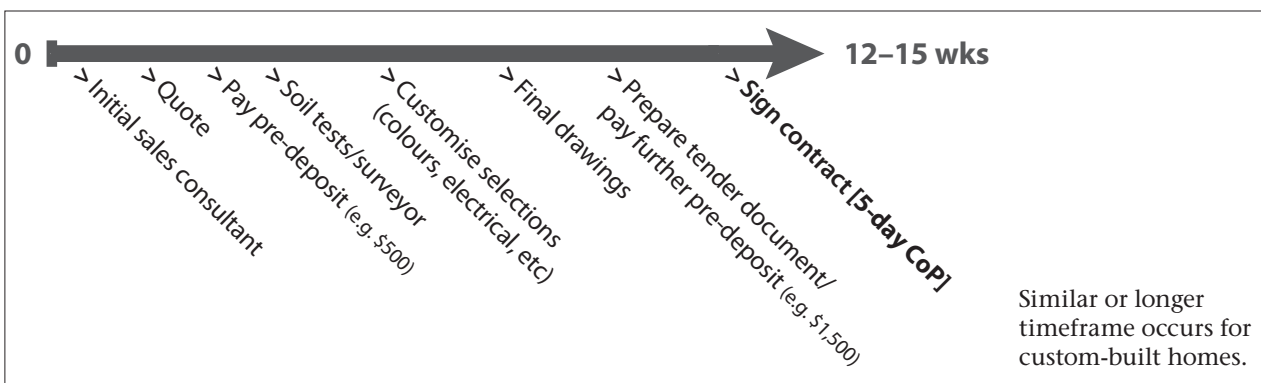


Figure 2 Contract process for volume builders

Smaller custom builders also reported that cooling-off periods were largely irrelevant:

“For our business there is a long relationship and lots of back and forth before the contract even comes into it.”

However, it should be noted that the research did not assess the impact of cooling-off periods on smaller building contracts.

Real estate agents

Real estate agents generally accept that cooling-off periods have a role to play in their business. They do, however, make the point that the ‘subject to...’ clauses (especially finance clauses) that purchasers have inserted into residential contracts can play a similar role to cooling-off periods because they give the buyer more time to fully assess their situation. However, real estate agents also report that vendors usually prefer offers without ‘subject to’ clauses because they are more likely to proceed.

While real estate agents see a role for cooling-off periods, they argue they should be more limited than is currently the case. They believe cooling-off periods are primarily designed to protect inexperienced, naive purchasers, such as first home buyers. They also argue that experienced buyers use cooling-off periods for their own benefit. For example, a purchaser may sign a contract for a number of properties at the same time, knowing that they have a cooling-off period in which they can change their mind. This gives the purchaser more time to decide between their options and select the deal that best suits their situation. Real estate agents argue that this situation creates unnecessary work for the real estate agents and disadvantages vendors by taking properties off the market for up to five days. While the cooling-off period is only three days, if the contract is signed on a Friday, this can mean the property may not be back on the market until the following Thursday if the buyer exercised their cooling-off right at the last moment. Real estate agents claim this can severely disrupt the momentum of the sales process.

Furthermore, real estate agents argue that the cooling-off periods previously applied to purchases under a prescribed amount. They believed this was a more equitable situation as it prevented many experienced purchasers from abusing the cooling-off period, such as in the above example.

Real estate agents also argue that cooling-off periods unfairly cost the vendor, as while the property may sell, it takes extra time and incurs extra costs. In addition, the vendor rarely gets any financial compensation when the buyer cools off. Few real estate agents report imposing any penalty on the buyer for cooling off, despite having the right to do so. The reason appears to be that there is nothing in it for the real estate agent, so they do not bother. Indeed, it would impose additional administration issues and costs for the real estate agent, so it is easier for the real estate agent to return the deposit in full and not impose any financial penalty.

Used car traders

Used car traders accept cooling-off periods, acknowledging that it protects consumers from pushy salespeople and gives consumers time to consider their decision. Traders say consumers typically make quicker decisions about buying a used car (same-day decision), compared to a new car (one- or two-week decision).

Used car traders also reported that in today’s information-rich environment, consumers are more informed before visiting car yards than they were many years ago. Access to information via the internet has allowed potential buyers to research cars prior to visiting the car yard. Buyers make more informed decisions, reflected in lower rates of cooling off.

The cost to used car traders of consumers exercising their cooling-off period tends to be time spent on the sale and preparation of a vehicle. For some used car traders, it can also have impact via the cost of holding stock, as cars tend to depreciate in value. If a sale falls through, another buyer may not come along for several months.

“The quicker you sell the car the better.”

Used car traders use waivers when a customer wants the car before the end of the cooling-off period. The use of waivers varied considerably, from rarely (typical in regional areas) through to 30 to 40 per cent of purchases. In most cases where cooling-off rights are waived, the survey indicated that consumers are not informed of waiving their rights until they arrive to pick up the car. Only at that point does the salesperson ask the consumer to sign a waiver. Consumers tend to sign because they want the car they have come to collect.

Introduction agents

Introduction agents accept that cooling-off periods have an important role, as consumers are making an emotion-charged purchase with the potential for 'rogues' to exploit the vulnerable.

Introduction agents claim to inform clients verbally and/or in writing of the cooling-off period. Some perceive the cooling-off period as being beneficial to their business when selling introduction plans. They argue that reassuring potential clients they have three days to reconsider can make them more comfortable committing to the purchase.

"It stops people feeling trapped. It definitely helps them commit."

While introduction agents claim that if a client does not want to proceed, it is best they do not, the 'sell' does not necessarily stop if someone tries to cool off:

"Three a month might initially change their mind, but we talk to them and try to address their concerns. So in the end only one in three will actually cool off. But we make sure it's their decision."

"If we receive a fax or email (cooling off) we ring them straight away to find out the reason. Sometimes they just need reassurance or you find out they have overspent and they need to be put on a smaller program."

Some introduction agents felt that the financial penalty for cooling off is low, given that agents can spend considerable time on the client in an initial consultation and in signing them to a program.

"\$50 is a joke. We don't even bother with this."

"I pay back 90 per cent of the fee, but sometimes it's not even worth the paperwork."

One agent did get around the financial penalty by imposing a joining fee (\$1,000) and signed request to commence work immediately, admitting to applying this procedure specifically to doubtful consumers:

"We do this if they are someone who looks like they are going to change their mind."

Unsolicited sales, telemarketing and door-to-door

Most companies involved in unsolicited sales also appreciate the role of cooling-off periods because it ensures consumers have time to consider their purchase without sales pressure. It gives consumers the opportunity to investigate their decision, look into existing contracts they may have, and discuss decisions with partners or family members.

Retailers who sell by telemarketing claim to provide a cooling-off form in their documentation. One trader insisted consumers could not cool off until they received their documents in the mail because:

"We want them to read the information."

However, this can be a barrier for consumers who may wish to cool off the day after a phone purchase, when they have not yet received documentation from the trader.

For all traders using telemarketing and door-to-door sales techniques, the cost of closing the sale is the cost associated with cooling-off periods: "It can take 40 minutes to close a sale over the phone." Additionally, traders who operate nationally also claim that cooling-off legislation creates significant administration costs due to inconsistent cooling-off requirements in different jurisdictions. In order to overcome this issue, most adhere to the Victorian legislation because it imposes the strongest consumer protections. However, they may still have to produce multiple documents. Differences between jurisdictions can create a risk of non-compliance because of confusion between the various cooling-off requirements, the states in which they apply and the conditions to which traders must adhere.

While door-to-door and telemarketing sales teams appear to adhere to cooling-off legislation, seminar selling allows companies to avoid cooling-off periods. One company interviewed, which sold wealth education tools, (refer to the case study below), conducted most of their sales via this mechanism and deliberately chose not to provide a cooling-off period.

CASE STUDY

Wealth education tools

Potential buyers are invited to attend seminars. At these seminars, the product is sold at a 'buy now' price of between \$3,000 and \$6,000. If it is not purchased on the day, the consumer will pay more than \$7,000. For the seller, seminars are a profitable and successful sales tool: *"From a good seminar we might get \$50,000 sales from 200 people"*.

The representative of the company indicated that in the fine print, there may be a five day or 30-day money back guarantee. In practice however, *"it can be hard to read on some of the forms"*. Furthermore, the representative explained that they do not promote the cooling-off period... *"We don't promote this because in the one case we did, we had an enormous amount of refunds. In that case, around 70 per cent applied for a refund."*

The company representative (not the business owner) does recognise that it is the 'hyper' atmosphere of the seminars that gets customers excited and willing to make impulsive decisions. They also acknowledge that everyone should have an appropriate cooling-off period but in this case, it is not the way the business owners choose to operate.

10.3 Traders' feedback on the cooling-off process

Most traders claim there is no financial penalty if consumers cool off within the cooling-off period, and claim they fully refund any money paid, with the exceptions being:

- introduction agents, who tend to provide the refund required by law
- traders who incur out-of-pocket expenses, such as builders (for example, surveyor costs and soil tests) and used car traders (for example, a tint on a car).

When consumers exercise their cooling-off rights, traders claim some consumers immediately regret their decision and cool off the next day,

while others wait until the last minute to exercise their right. Traders believe that cooling off occurs mostly due to 'buyer's remorse' and specific reasons are not always given. Even when consumers provide excuses for cooling off, they are likely to be unreliable because they may be uncomfortable providing the real reason.

Most traders ask for written confirmation of cooling off because phone messages alone can create issues:

"I don't always get the messages and then it's after the cooling-off periods and I have to give them the benefit of the doubt."

As mentioned previously, telemarketing sales include a form with their documentation for use in cooling off.

The other issue for traders is the lag that cooling-off periods create. Most traders report they do not install or commence services until after the cooling-off period ends. However, consumers do not realise this is the reason for the delay and many want the service sooner:

"It's hard to sell something and then have to wait two weeks before you get it."

"This time lag in itself creates a cooling off."

Traders also want to clearly distinguish that a cooling-off period is not a trial period and they claim the timeframe should acknowledge this. Traders argued that a longer cooling-off period would create further confusion for consumers.

Many traders believe cooling-off periods should not be about giving consumers additional rights:

"It's about giving them the same information they would have access to if they had purchased in a retail environment. Arguably, once they have been provided with this material they have been protected... so why does it need to be 10 days?"

Traders would also be reluctant to have longer cooling-off periods imposed because this could increase cooling-off rates. For example, more than three days could adversely affect real estate agents and used cars traders. Similarly, a cooling-off period of more than the current 10 days could create further operational issues for door-to-door or telemarketing sales, by further delaying installation of the product or service, as well as increasing consumers' confusion between cooling-off periods and trial periods.

“Detailed findings – Consumers’ perspective”

11

The following section reports the findings of Phase 1 (quantitative consumer survey) and Phase 3 (qualitative consumer depth interviews). The quantitative results focus on three particular groups:

- **Total sample** – based on a weighted sample of 1,500 consumers that represented all Victorians
- **Purchasers** – defined as any respondent who purchased from the specified categories in the past two years
- **Exercisers** – defined as any respondent who exercised their cooling-off rights from the specified categories in the past two years.

The specified categories referred to above include:

- goods or services (over \$50) as a result of door-to-door sales
- goods or services (over \$100) as a result of telemarketing
- residential real estate (not bought at an auction or within three days of an auction)
- used cars from a motor car trader
- domestic building contract (for over \$5,000) in building work
- a residence contract for retirement village
- introduction agency services
- gas or electricity contracts.

11.1 Awareness of cooling-off periods

General awareness of cooling-off periods amongst Victorian consumers was high (85 per cent). This awareness level was consistent across men and women, metropolitan and regional areas, income levels and across *Purchasers* and *Exercisers*. The only difference based on demographics was that of age. Figure 3 shows that those aged under 30 reported lower awareness of cooling-off periods (75 per cent) when compared to older Victorians (between 86 and 88 per cent).

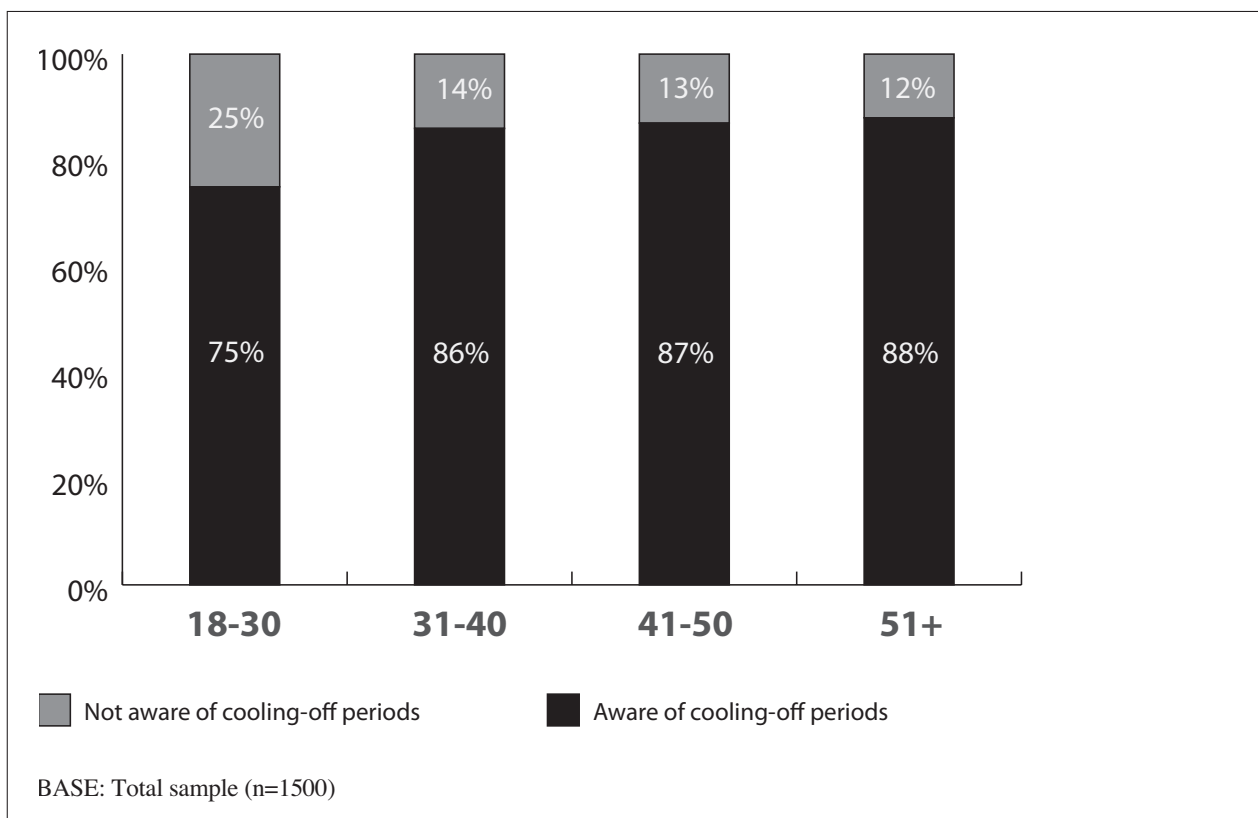


Figure 3 Awareness of cooling-off periods divided by age categories

However, while general awareness of cooling-off periods is high, specific awareness of cooling-off periods is more variable. When asked what purchases cooling-off periods apply to, consumers are less knowledgeable. Figure 4 displays consumers' spontaneous awareness of cooling-off categories. It shows that Victorian consumers incorrectly perceive a number of purchase categories to have cooling-off periods. For example, 27 per cent of consumers assume all real estate purchases, including those bought at auction, have a cooling-off period. The survey also indicated that a further 17 per cent incorrectly cited real estate bought at auction to have cooling-off periods. Similarly, there was confusion relating to car purchases, with 20 per cent of Victorians believing cooling-off periods apply to all car purchases, and a further 18 per cent specifically citing new car purchases. (At the time of the survey, new car sales were not subject to a cooling-off period).

The highest correct categories (those with legislated cooling-off periods) reported were real estate not bought at auction (23 per cent) and used cars bought through a licensed dealer (18 per cent). This is not unexpected given that most consumers would have purchased in these two categories at some stage in their life and would therefore have some knowledge of the process.

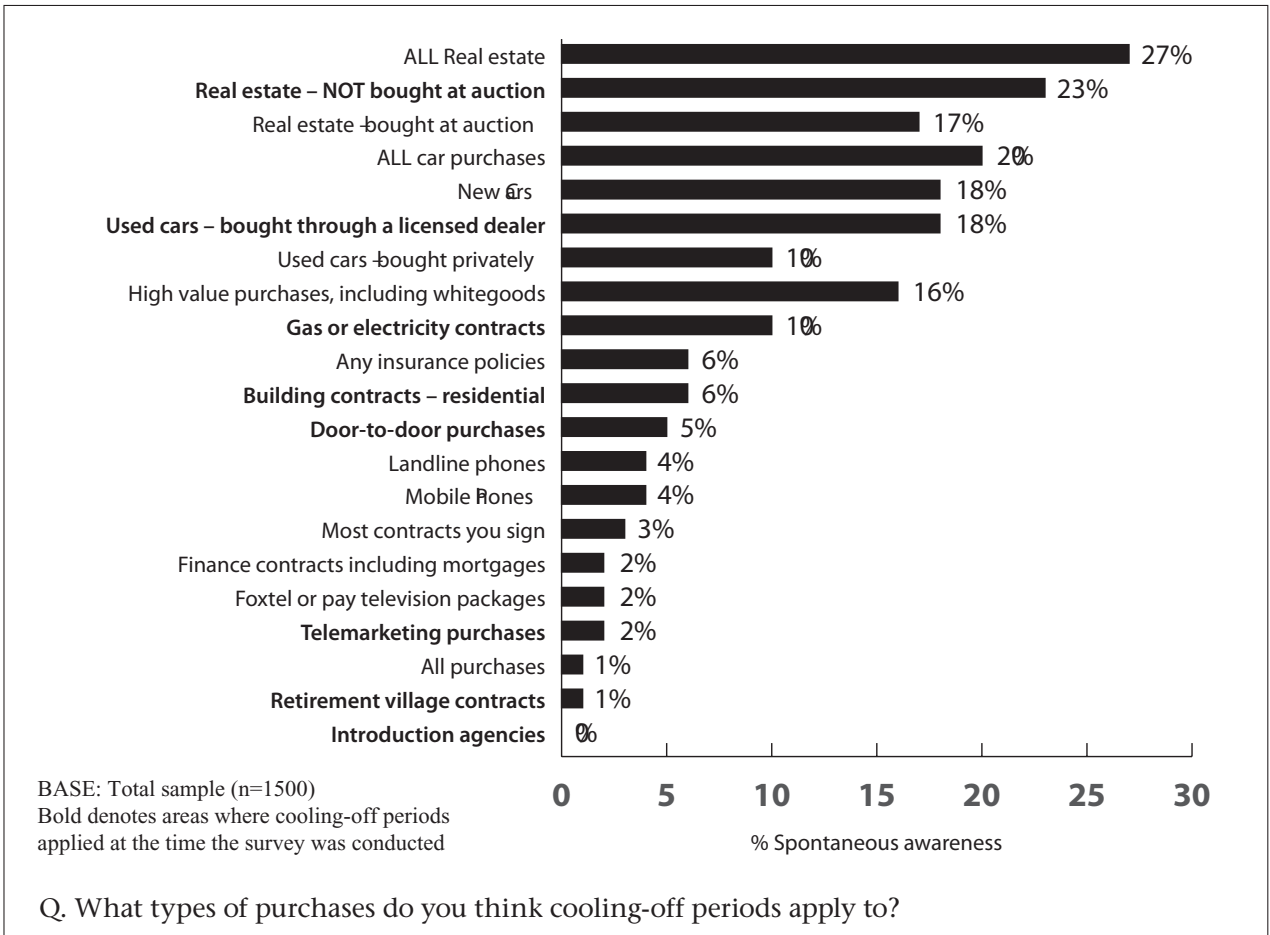


Figure 4 Spontaneous awareness of categories where cooling-off periods apply

When prompted with categories, consumers more accurately reported the purchases to which cooling-off periods apply. Figure 5 shows that once prompted, 76 per cent of Victorians correctly nominate real estate not bought at auction. However, 57 per cent also believe cooling-off periods apply to real estate bought at auction. We see a similar situation with car purchases. Sixty-five per cent of Victorian consumers nominated used cars bought through a licensed motor car trader, but 63 per cent nominated new cars.

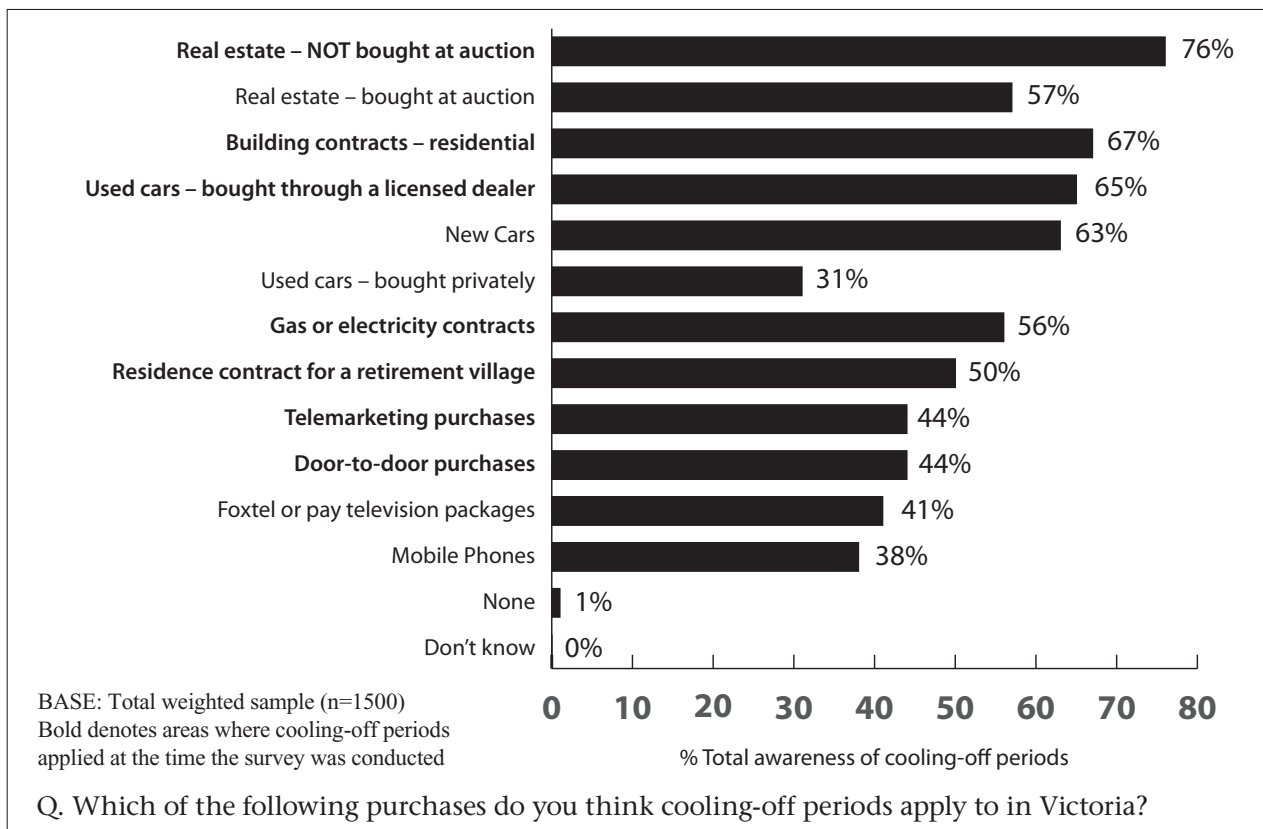


Figure 5 Prompted awareness of categories where cooling-off periods apply

In general, although most consumers were aware of cooling-off periods as a term, they lacked specific knowledge. The qualitative research confirmed this finding by revealing confusion regarding when cooling-off periods apply, what periods they apply for, and what process is required to exercise those rights.

The qualitative research highlighted that many consumers confuse cooling-off periods with trial periods, warranties and money back guarantees. This is especially the case for goods and services purchased via telemarketing and door-to-door sales.

Additionally, some consumers believe they should be able to trial products before deciding to keep them or not. Again, they particularly refer to purchases made via telemarketing or door-to-door sales. This is partially because some products and services sold via these means may not live up to the sales pitch, including:

- education programs
- wealth creation schemes and seminars
- holiday vouchers
- introduction agencies.

As a result of the confusion between cooling-off periods and trial periods, consumers criticised cooling-off periods for being too short to enable a trial of the product to occur:

"I think the 10 days could be prolonged a little bit. It would just give us a chance for, not just if you change your mind on it, but if it's a service or providing something you can give it a chance. And you won't really know within 10 days, not that much anyway, well not in my case anyway."

"The cooling-off period? It's basically a trying, trying time. Try before you buy basically."

"Like I say with the, the software being installed. There certainly needed to be a time that you could test it or realise or whatever, so probably a month I would say. Yeah...Well I think that's fair in that you can gauge whether you know it's of benefit and it's working, and yeah the software is doing what it said it's supposed to do."

11.2 Consumers affected by cooling-off periods

An important objective of the research was to ascertain the proportion of Victorians who purchased products covered by cooling-off legislation. The research found that in the past two years, four in 10 Victorians have purchased products or services covered by cooling-off legislation, and in total, 43 per cent of Victorians were either *Purchasers* or *Exercisers*.

11.3 Purchasers affected by cooling-off periods

Respondents who had purchased within the past two years were asked to specify the categories in which they had purchased products or services covered by cooling-off legislation (see Figure 6). Victorians reported the most common purchase category as gas and electricity, which made up more than half of the purchases affected by cooling-off periods (53 per cent).

Other common purchases included used cars bought through licensed motor car traders (26 per cent), real estate not bought at auction (20 per cent), and door-to-door purchases (17 per cent – excluding gas and electricity). Only a small number of consumers had purchased a residence contract for a retirement village (two per cent). This low percentage is expected given that it is relevant to a smaller proportion of Victorians.

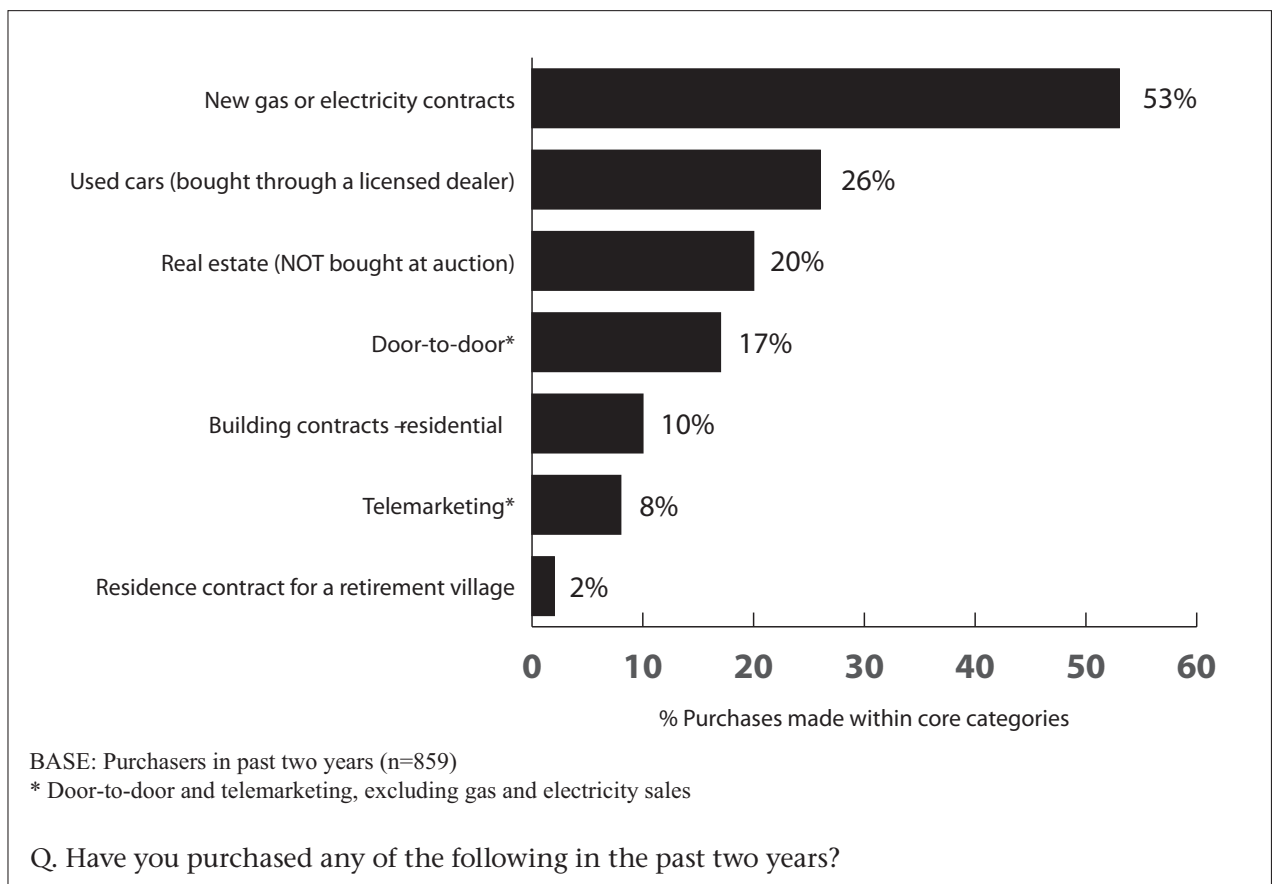


Figure 6 Overall categories purchased within the past two years

Two commonly used sales methods subject to cooling-off legislation are door-to-door and telemarketing. Victorians who had purchased via these methods were asked to describe the product or services they bought. Regarding door-to-door sales, two out of three people purchased gas and electricity contracts (62 per cent).

Telemarketing sales incorporate a wider variety of goods and services. In addition to gas and electricity contracts (23 per cent), consumers purchased mobile phones (26 per cent) and holiday/timeshare (20 per cent) via telemarketing.

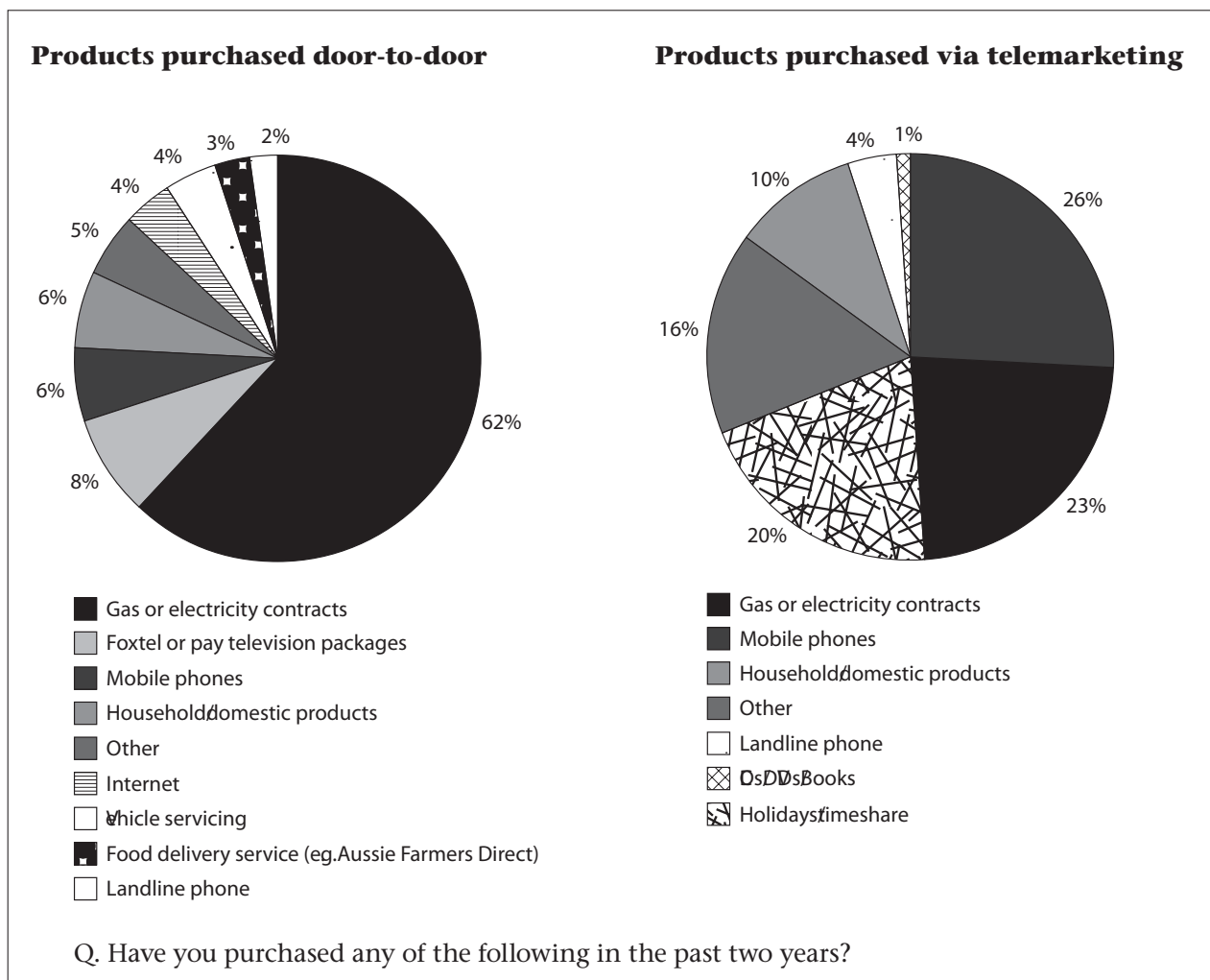


Figure 7 Products purchased door-to-door or via telemarketing

Table 2 displays the demographic profile of *Purchasers* compared to the total sample. Half of the *Purchasers* (50 per cent) were aged 40 years of age or less (compared with 37 per cent in the total sample).

		Total Sample (n=1500)	Total Purchasers (n=859)
GENDER	Male	50%	47%
	Female	50%	53%
LOCATION	Metro	70%	70%
	Regional	30%	30%
AGE	18 – 30	18%	25%
	31 – 40	19%	25%
	41 – 50	22%	20%
	51 – 60	20%	14%
	61 – 70	13%	10%
	71 – 80	9%	5%
INCOME	< \$40,000	26%	23%
	\$40,000 – \$60,000	21%	20%
	\$60,000 – \$80,000	13%	15%
	\$80,000 – \$100,000	11%	11%
	\$100,000 – \$120,000	7%	9%
	\$120,000 – \$150,000	4%	5%
	\$150,000 – \$200,000	2%	2%
	> \$200,000	2%	3%
	Refused	14%	13%

Table 2 Demographic information – Purchasers

The impact of the legislation is obviously reduced if purchasers are not aware of the existence of cooling-off periods when buying a product or service covered under the legislation. The research shows that while generally aware of cooling-off periods, only two out of three *Purchasers* (66 per cent) are aware of cooling-off periods at time of purchase. Consequently, about a third of *Purchasers* (34 per cent) are unaware of their rights at the time of purchase.

However, awareness of cooling-off periods at the time of purchase did differ depending upon the category of purchase (refer Figure 8). Consumers who signed contracts for retirement villages (82 per cent), real estate (81 per cent) and building had the highest level of awareness of the cooling-off period. Only 61 per cent of people who bought used cars from a licensed motor car trader were aware of their cooling-off rights at the time of purchase. Similarly, only about two in three consumers who purchased products or services via door-to-door (63 per cent) and telemarketing (57 per cent) were aware of cooling-off periods when purchasing.

Purchasers who were aware of cooling-off periods were asked how they became aware of their rights. Under the legislation, in certain categories such as door-to-door and telemarketing, the salesperson is required to inform customers that a cooling-off

period applies to the product or service. This is reflected in the results of the survey, which indicated that the salesperson was the greatest informer of the cooling-off period (see Figure 9), with 57 per cent of *Purchasers* reporting that the salesperson was the source of cooling-off period information.

Additionally, sales subject to cooling-off legislation require a written statement in the contract documents informing the consumer of their rights. Consequently, the second highest source of information was the contract itself (27 per cent). Other *Purchasers* relied on their previous experience (13 per cent), while a small number (2 per cent) obtained their knowledge from Consumer Affairs Victoria.

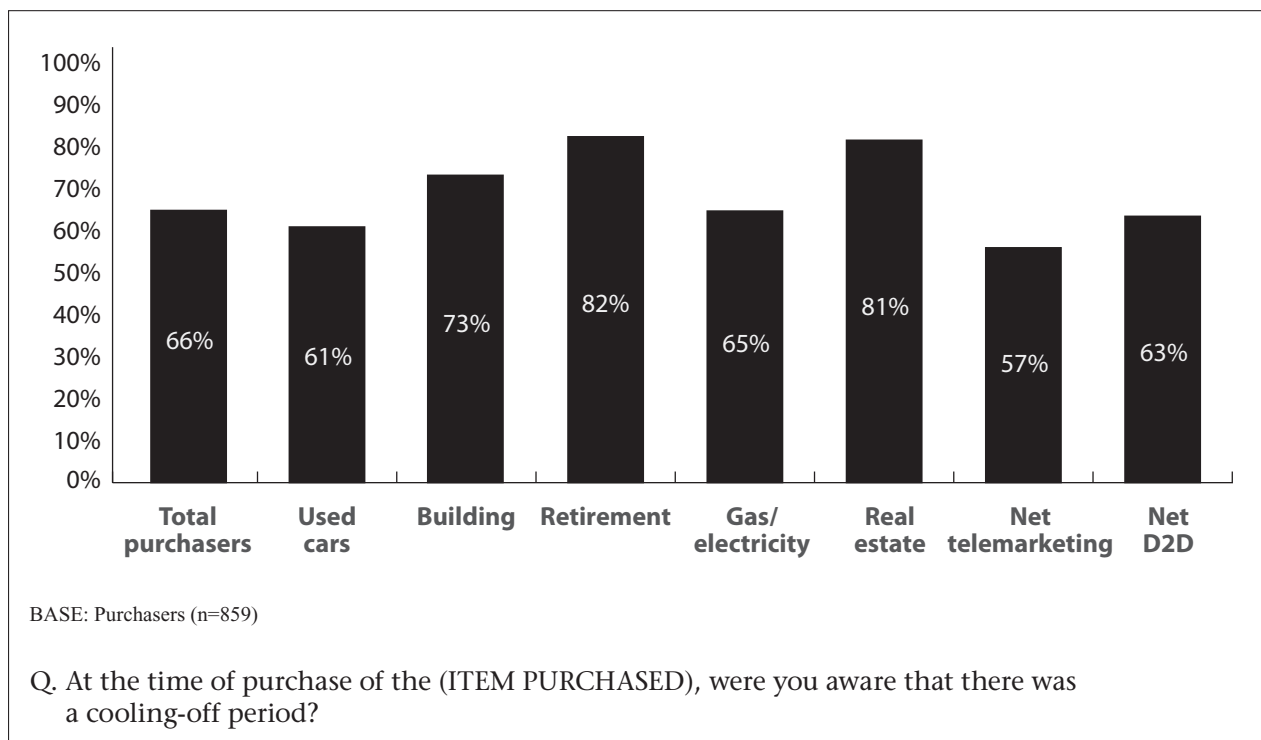


Figure 8 Awareness of cooling-off period at time of purchase split by type

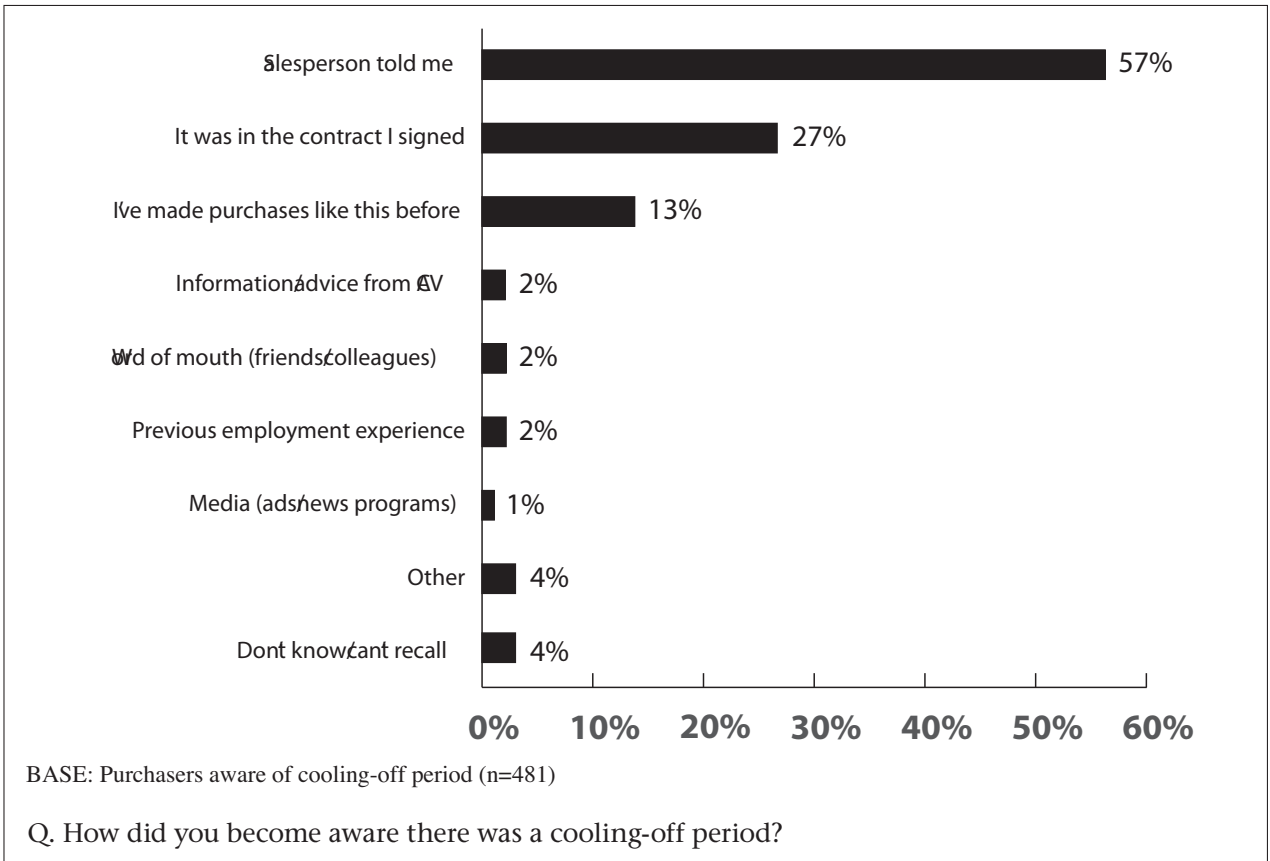


Figure 9 Source of cooling-off information

With more detailed examination, variations on the source of cooling-off periods information can be seen across purchase categories (see Table 3). Consistent with the legislation, for consumers who purchased gas and electricity contracts, the salespeople were the main source of information (61 per cent). For real estate, most people gained information from the contract they signed (39 per cent). For door-to-door purchases, 75 per cent gained their cooling-off periods information from the salesperson compared to 51 per cent for telemarketing.

	Total Purchasers (n=418)	Used Cars (n=111)	Building (n=53)	Retirement (n=9)*	Gas/ Electricity (n=253)	Real Estate (n=118)	Net Tele- marketing (n=35)	Net D2D (n=67)
Salesperson told me	57%	47%	38%	67%	61%	37%	51%	75%
It was in the contract I signed	27%	16%	32%	33%	30%	39%	26%	19%
I've made purchases like this before	13%	25%	11%	11%	11%	17%	6%	7%
Information/advice from CAV	2%	3%	2%	-	1%	3%	-	3%
Word of mouth (friends/colleagues)	2%	4%	2%	-	2%	2%	3%	-
Previous employment experience	2%	4%	2%	-	1%	3%	3%	1%
Media (ads/news programs)	1%	1%	2%	-	1%	1%	9%	-
Other	4%	5%	8%	-	4%	10%	3%	1%
Don't know/can't recall	4%	5%	13%	11%	3%	3%	6%	-

BASE: Aware of cooling-off period and purchased in category

*Note: Small bases

Q. How did you become aware there was a cooling-off period?

Table 3 Source of cooling-off information split by purchase category

11.4 Incidence of claimed Exercisers

One of the main objectives of the research was to establish the incidence of Victorians who exercise their cooling-off rights. To achieve this, the total sample was asked if they had exercised their cooling-off rights or cancelled a contract within the cooling-off period (within the past two years).

Almost two in 10 Victorians (19 per cent) claim to have exercised their cooling-off rights within the past two years.

Claimed *Exercisers* are more likely to be female (43 per cent) than male (36 per cent) (see Figure 10) and more likely to be younger (see Figure 11).

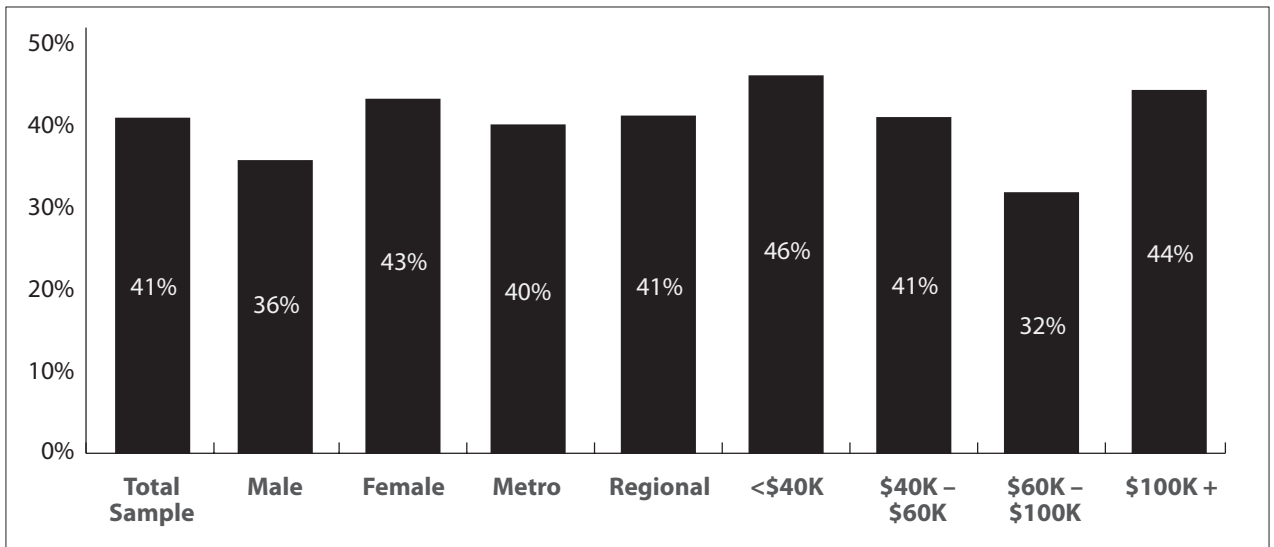


Figure 10 Claimed Exercisers across gender, location and income

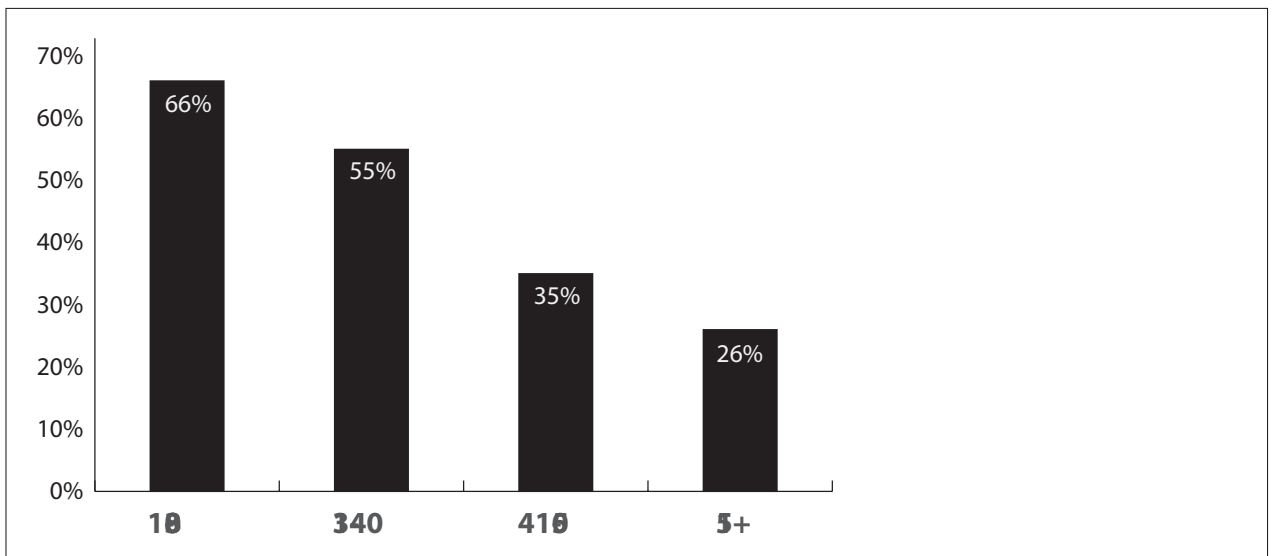


Figure 11 Claimed Exercisers across groups

11.5 Incidence of Exercisers

Although 19 per cent of Victorians claimed to have exercised their rights within the past two years, it was important to qualify these claims by establishing that they had purchased in the categories subject to cooling-off legislation. It was also important to find out the timeframe during which they enacted their cooling-off right. After qualifying claims based on the above criteria, the research showed eight per cent of Victorians (133 of our sample) had exercised their cooling-off rights within categories and timeframes to which cooling-off legislation applies.

This does not mean that the other 11 per cent of Victorians that claimed to have exercised cooling-off rights did not do so, but we cannot determine if it was the exercise of a cooling-off right, or a warranty claim, change of mind, money-back guarantee or a voluntarily-imposed cooling-off period. For this reason, we focus the remainder of this report on *Exercisers* (eight per cent of Victorian consumers).

The 133 Victorians who had exercised their cooling-off rights did so across a range of products (see Figure 12). The majority of *Exercisers* made gas and electricity purchases (59 per cent), followed by landline phone (12 per cent) and mobile phone (7 per cent) contracts. There were no 'building' or 'retirement' *Exercisers* in the quantitative survey, which is a reflection of the feedback from traders relating to the lengthy purchase process. Furthermore, Figure 13 shows that the majority (50 per cent) of purchases by *Exercisers* were made from telemarketing calls (50 per cent), followed by door-to-door sales (30 per cent).

The survey indicated that the majority of door-to-door sales were gas and electricity purchases (71 per cent). There was a much greater mix of products purchased via telemarketing sales, with gas and electricity accounting for only 38 per cent.

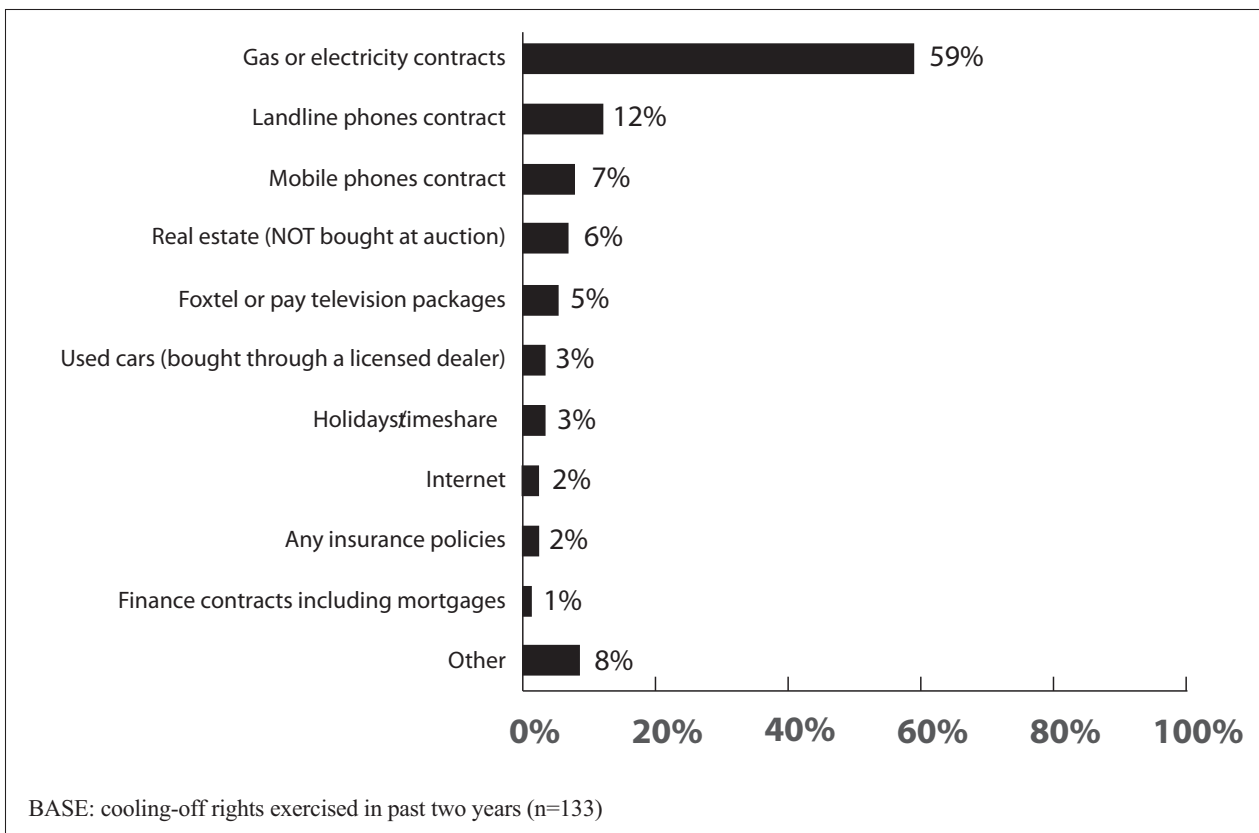


Figure 12 Products purchased when cooling-off exercised

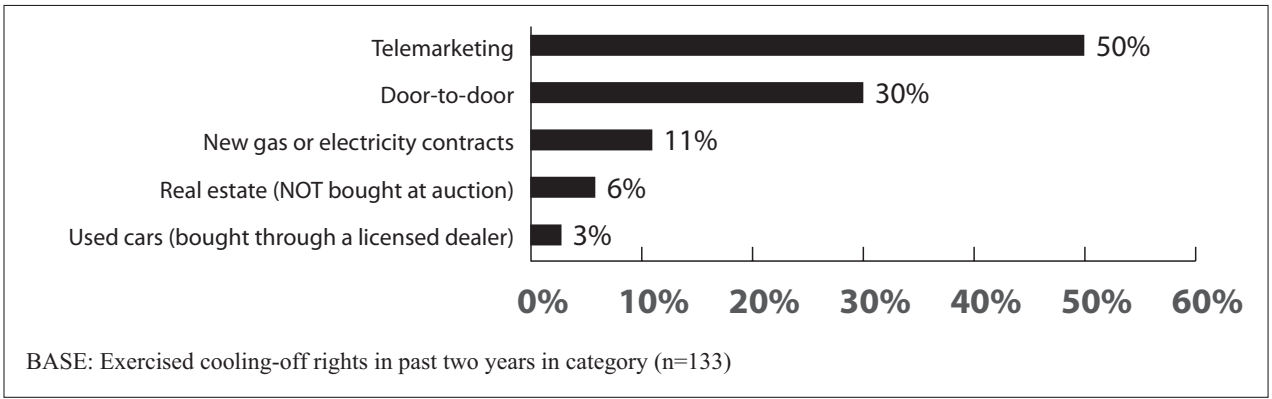


Figure 13 Exercisers category of purchase

11.6 Exercisers' awareness of cooling-off periods

As discussed in Section 11.1, Victorians have mixed awareness of the types of purchases to which cooling-off periods apply. Figure 14 compares the spontaneous awareness of cooling-off periods' product categories for *Exercisers* and *Purchasers*. It shows that *Exercisers* tend to have similar levels of awareness to *Purchasers*, with the exception being gas and electricity contracts, the most common type of purchase made by *Exercisers*.

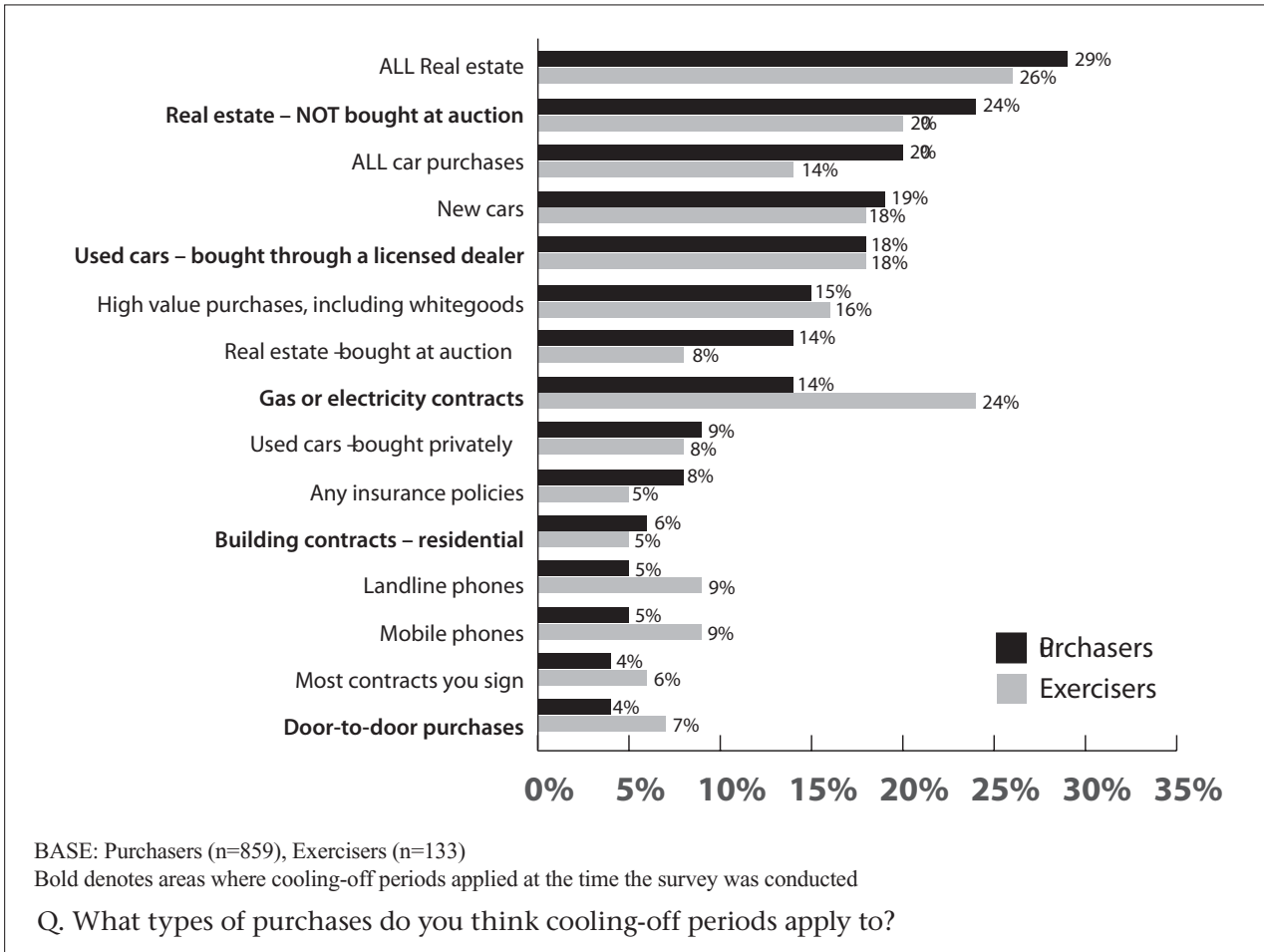


Figure 14 Spontaneous awareness of cooling-off product categories for Purchasers and Exercisers

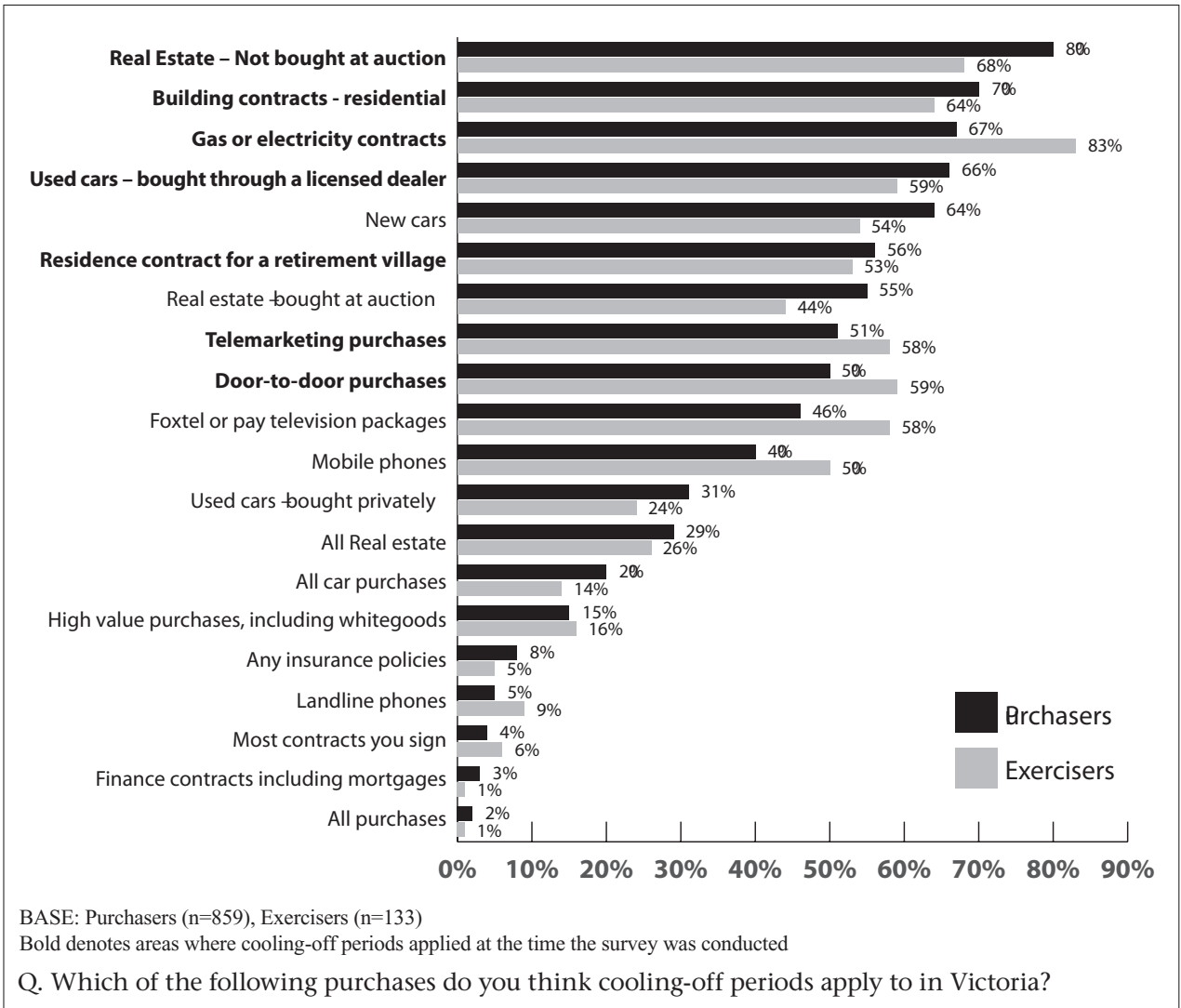
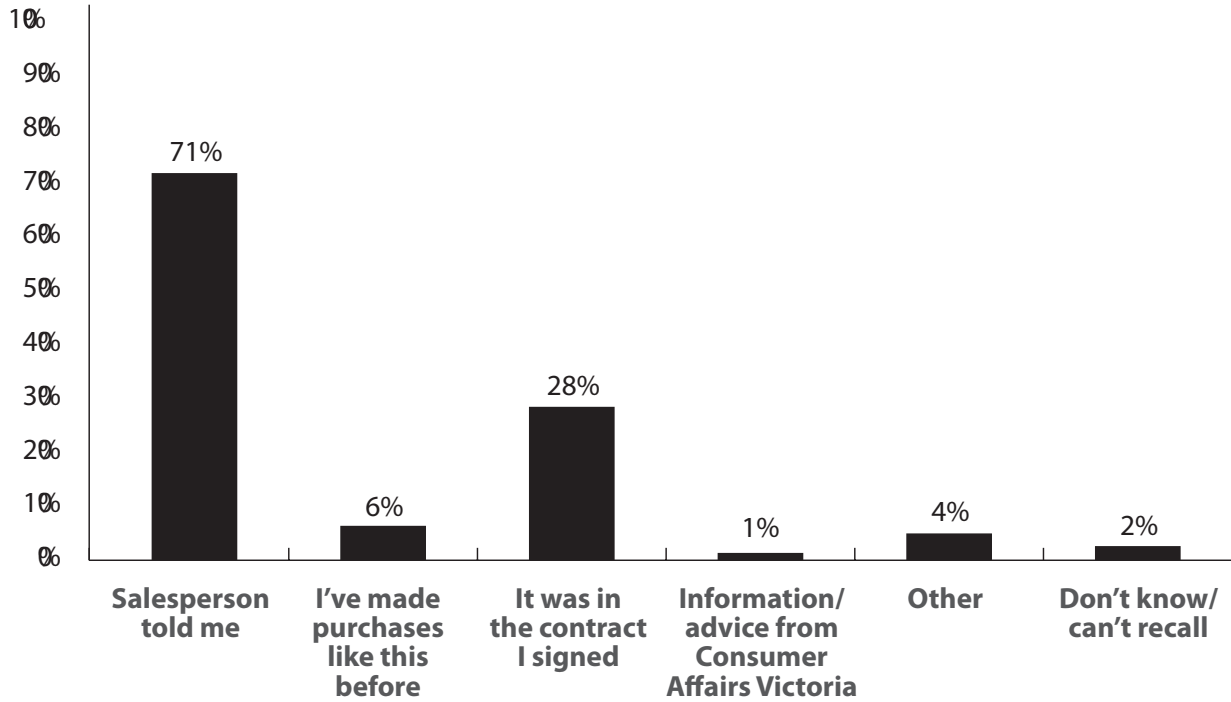


Figure 15 Prompted awareness of Purchasers and Exercisers

Figure 15 compares awareness when *Exercisers* and *Purchasers* were prompted with product categories. Once again, the largest difference was for gas and electricity contracts.

Exercisers were asked how they became aware of cooling-off periods in order to identify the source of their information (see Figure 16). Similar to *Purchasers*, the main source of cooling-off information for *Exercisers* was the salesperson (71 per cent), followed by obtaining information from the contract they signed (28 per cent).



BASE: Exercisers (n=133)

Q. How did you know there was a cooling-off period for the product or service you were purchasing?

Figure 16 Source of information for cooling-off periods for Exercisers

11.7 The experience of Exercisers

Exercisers were asked to identify how long it took after purchase to cool off. Table 4 shows that the majority of *Exercisers* cool off relatively quickly after purchase. Almost half of all *Exercisers*, across all categories, exercise their cooling-off right within three days of signing the contract.

	Used cars (n=4)*	Gas/ electricity (n=14)*	Real estate (n=4)*	Net Tele- marketing (n=40)	Net D2D (n=67)
24 hours / 1 day	50%	21%	50%	27%	28%
2 business days		14%	12%	20%	19%
3 business days	50%	14%	25%	15%	7%
4 business days		7%		2%	4%
5 business days (or a week)		14%	12%	3%	18%
Between 5 and 10 days		21%		12%	18%
10 business days (or two weeks)		7%		10%	1%
Between 10 and 15 days				5%	1%
Don't know / can't recall				5%	1%

*Note: some small bases

Q. How long after you signed the contract to purchase the product or service did you exercise your cooling-off rights?

Table 4 Number of days after signing contract before cooling-off rights exercised

The experience of *Exercisers* is partially determined by who they speak to at the company in order to exercise their cooling-off rights. Consequently, consumers were asked to identify who that was. The vast majority of *Exercisers* (85 per cent) spoke to the company or person selling the goods or services in order to cancel the contract. This was consistent across category of purchase (refer Table 5).

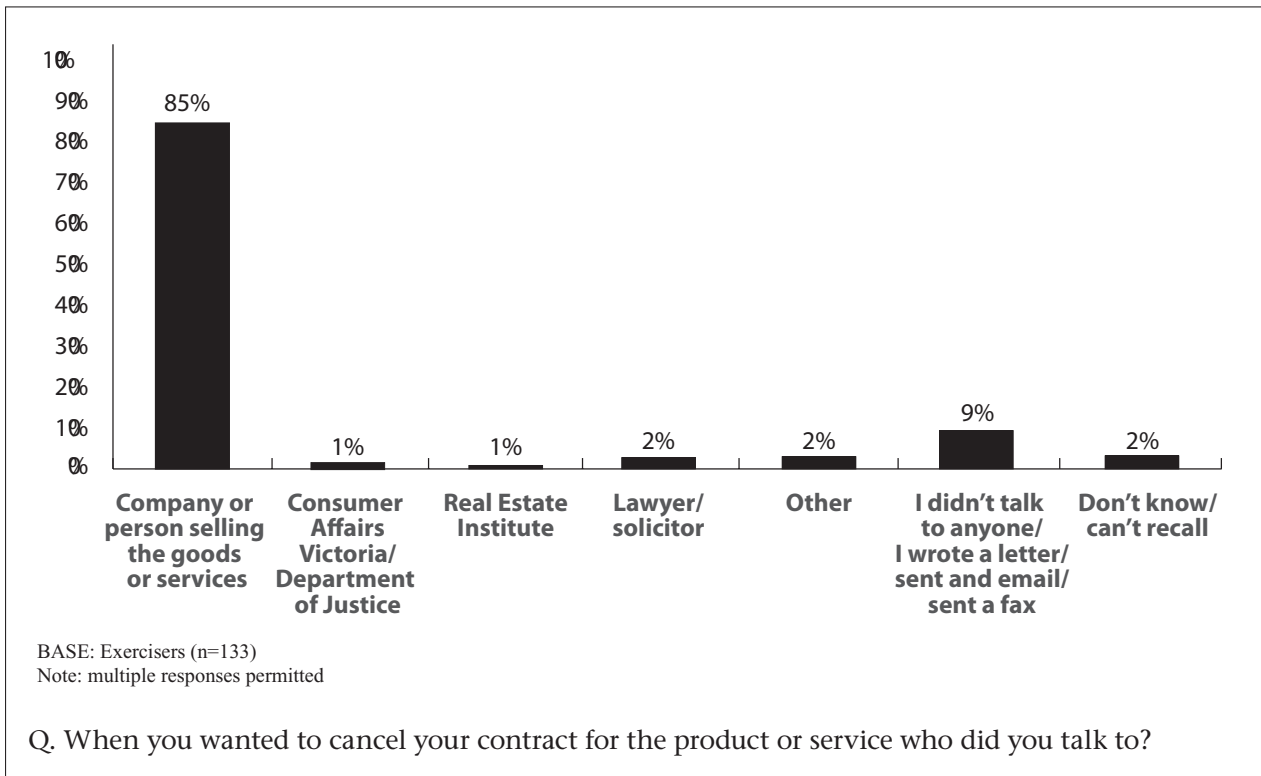


Figure 17 Person contacted to cancel the contract

	Gas/ Electricity (n=14)*	Net Tele- marketing (n=40)	Net D2D (n=67)
Company or person selling the goods or services	79%	80%	90%
Consumer Affairs Victoria / Department of Justice	7%		
Real Estate Institute	7%		
Lawyer / solicitor			
I didn't talk to anyone / I wrote a letter / sent an email / sent a fax		15%	9%
Other			4%
Don't know / can't recall	7%	5%	

Table 5 Person contacted to cancel the contract by category of purchase

Under cooling-off legislation, traders are empowered in certain circumstances to retain a proportion of monies paid when consumers exercise their cooling-off rights. It was therefore important to determine the proportion of *Exercisers* who experienced financial penalty when cooling off. Figure 18 shows that the majority of *Exercisers* suffered no financial penalty, with 92 per cent claiming there was no cost to cooling off.

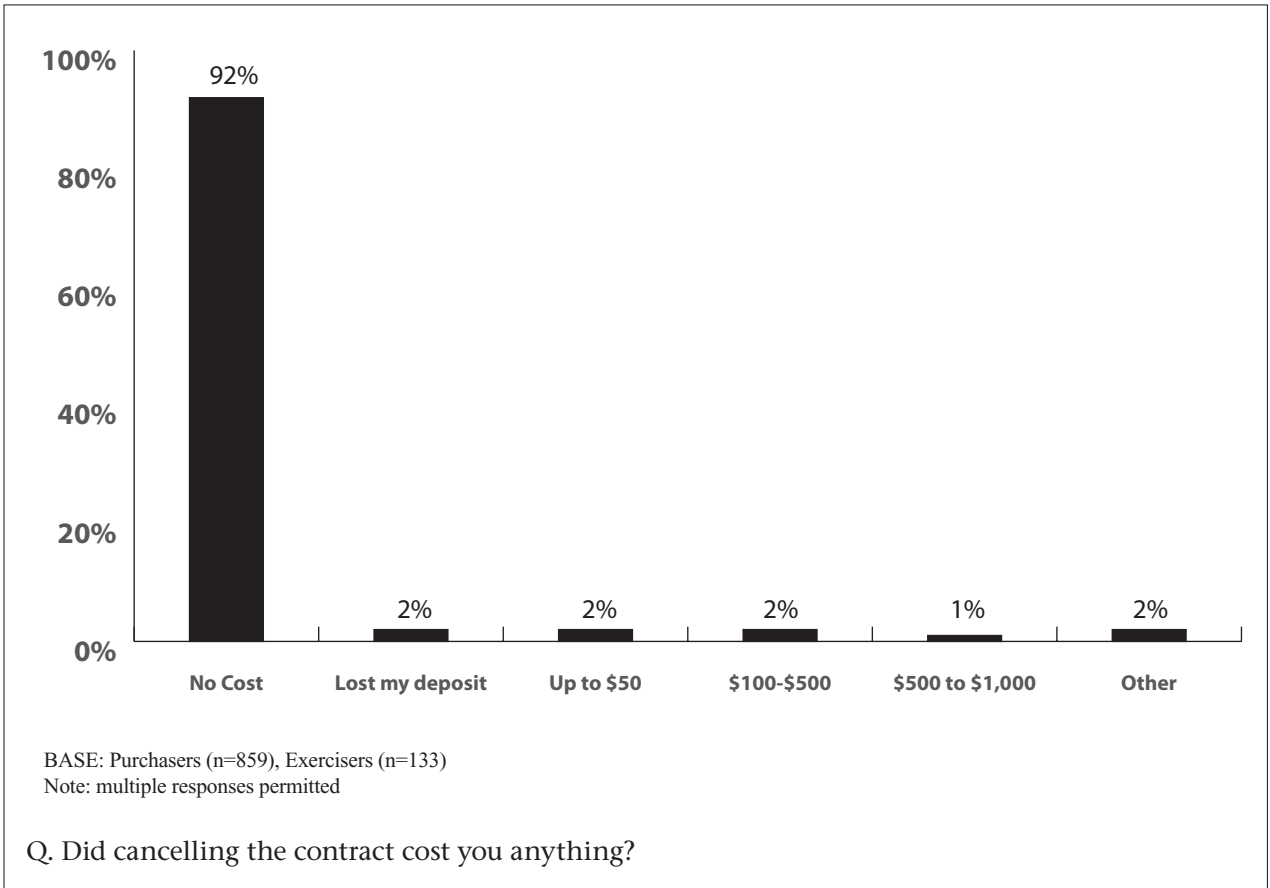


Figure 18 Financial penalty for cooling off

It was also important to understand if consumers generally have a positive or negative experience in cooling off. Three-quarters (74 per cent) of *Exercisers* claimed the cooling off experience was positive. *Exercisers* who had a positive response claimed it was positive because:

- there were no problems (58 per cent)
- pleasant or easy to deal with (53 per cent)
- got their money back quickly (5 per cent).

In contrast, negative responses were because:

- the person / company was difficult to deal with (65 per cent)*
- they didn't want to refund my money (18 per cent)*
- the person / company told me I could not get out of the contract (15 per cent)*.

* Caution should be used in interpretation due to the small sample size.

Section 11.11 refers to reasons for negative experiences and potential barriers to cooling off.

Exercisers were asked if they would use cooling-off rights again if they needed to. Almost all *Exercisers* claimed they would exercise again in the future, even those who had a negative experience. This positive response was consistent across purchase categories.

This result, and the qualitative research, indicate that once a consumer experiences cooling off, they are more comfortable and knowledgeable with process, and are more likely to exercise their rights in the future.

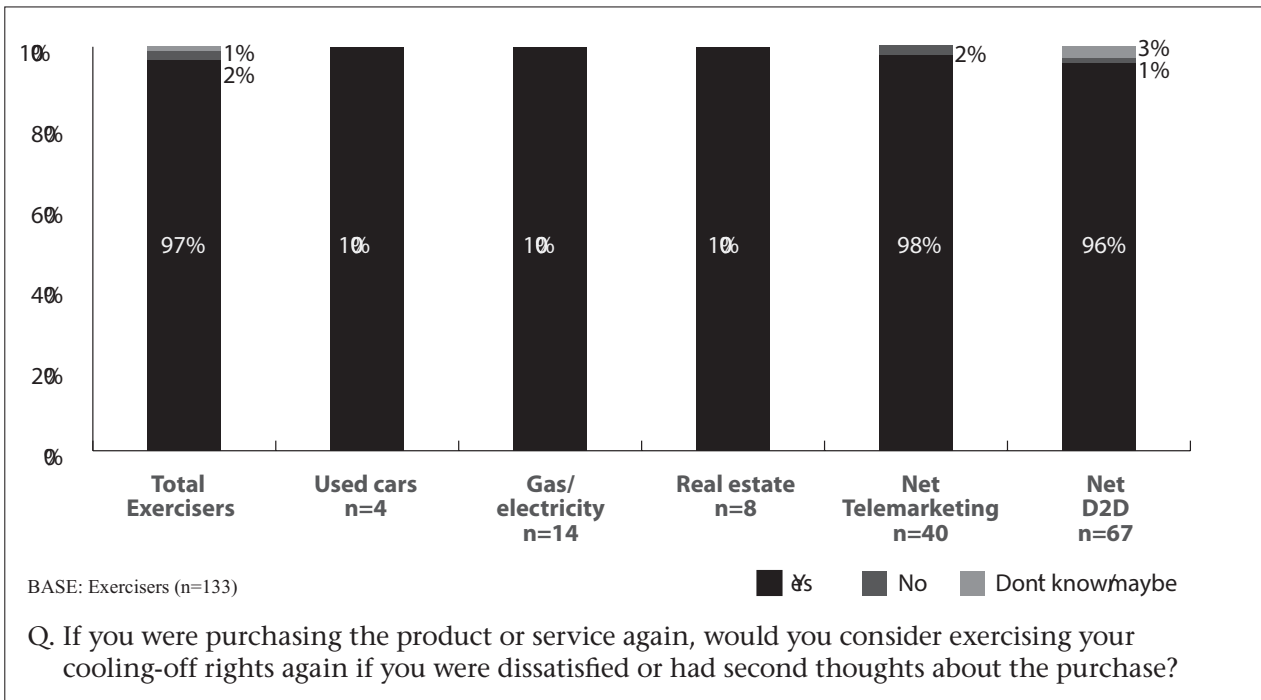


Figure 19 Exercisers who would consider cooling off again

11.8 Knowledge of cooling-off period timeframes

Cooling-off time periods vary for different purchase categories. At the time of the survey cooling-off periods were:

- three days for:
 - real estate (except at auction or within three days of an auction)
 - used cars and off-premises sales (no new cars)
- five days for:
 - building contracts
- 10+ days for:
 - telemarketing
 - door-to-door.

The variation in cooling-off time periods creates consumer confusion, particularly given that high-value goods have shorter cooling-off periods. This confusion makes it difficult for consumers to know their rights in relation to purchases, as they are often unsure what cooling-off time period applies on products they are considering buying.

The survey revealed that when *Purchasers* were asked the cooling-off period timeframe related to their purchase, their specific knowledge varied considerably. As seen in Table 6, only 34 per cent of used car and real estate *Purchasers* correctly identified three days as the cooling-off period. This leaves two-thirds of these used car and real estate *Purchasers* unsure of the cooling-off time period. The lack of knowledge across categories demonstrates this confusion.

	Used cars (n=114)	Building (n=53)	Retirement (n=9)*	Gas/ electricity (n=253)*	Real estate (n=120)	Net Tele marketing (n=40)	Net D2D (n=67)
24 hours / 1 day	2%			1%	1%		3%
2 business days	2%	2%		2%	3%		
3 business days	34%	21%	11%	15%	34%	17%	10%
4 business days	1%			1%	2%	3%	1%
5 business days (or a week)	13%	8%	11%	10%	10%	6%	9%
Between 5 and 10 days	9%	11%	22%	12%	4%	20%	18%
10 business days	6%	9%		20%	10%	20%	25%
Longer than 10 business days	10%	11%	22%	15%	17%	23%	13%
Don't know/can't recall	24%	38%	33%	24%	18%	11%	18%

Base: Aware of cooling-off period and purchased in category

Bold box indicates actual number of days of cooling-off period for category

Q. How long is the timeframe of the cooling-off period for a ... purchase?

Table 6 Awareness of cooling-off time period for purchasers by category

11.9 Exploring the role of cooling-off periods

Cooling-off periods can have a different role to play depending on the purchase category. The results of the study suggest that cooling-off periods have the biggest role in three groups of purchases:

- real estate and used cars
- door-to-door and telemarketing sales
- introduction agent services.

As previously described, the research suggests cooling-off periods have limited effectiveness with retirement village and building contracts. Figure 20 summarises the role and reasons for cooling off across certain categories suggested by the research.

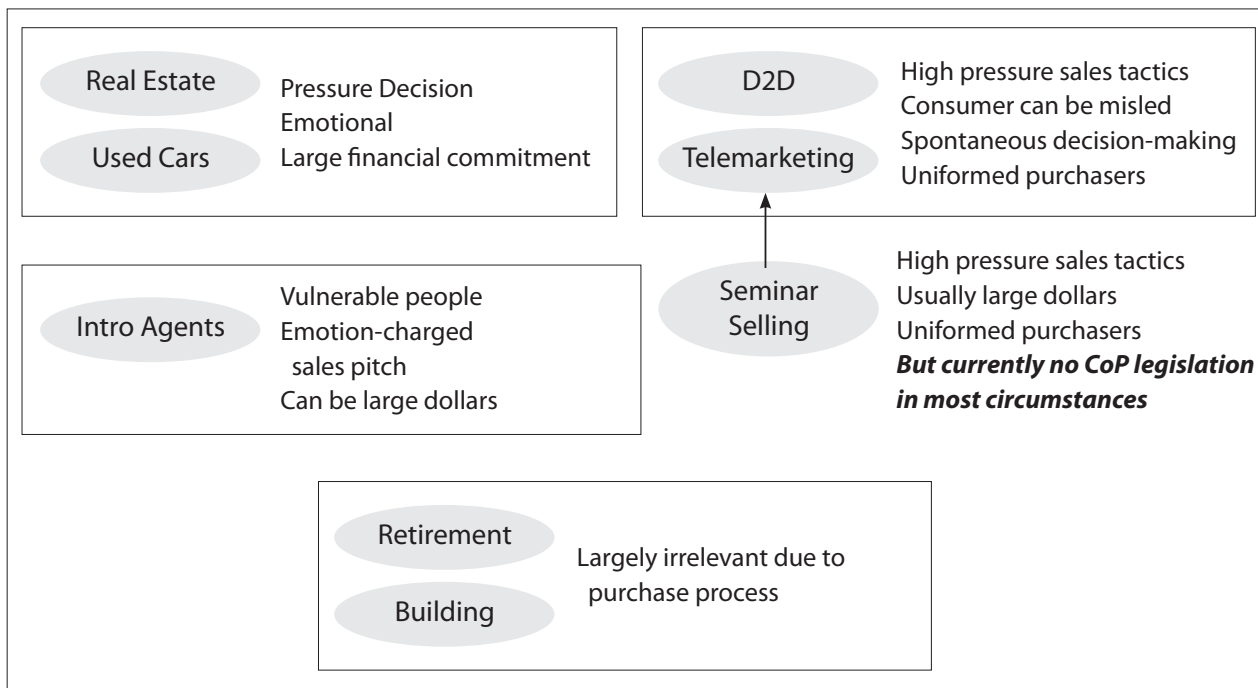


Figure 20 Reasons for cooling-off periods across categories

Cooling-off periods have an important role in real estate and used car purchases largely because of the pressure related to large financial commitments. These two categories of purchase are likely to be the largest financial commitments consumers make during their lives. This pressure is compounded by many factors, including that for most people these are infrequent purchases, and therefore they may be unfamiliar with the purchase process. Further, consumers may be driven by an emotional desire to own a particular car or house. Some purchasers reported falling 'in love' with a particular car or house, which influenced signing the contract. After the emotion of the purchase dissipated, some described how cooling-off periods were used to counteract the effect of their emotional decision.

Cooling-off periods also have an important consumer protection role for door-to-door and telemarketing sales, which can involve high-pressure sales techniques and the opportunity for consumers to be misled. This pressure, combined with potentially uninformed purchasers making spontaneous decisions, often leads to rash decision-making that consumers can later regret. Cooling-off periods allow a 'cool head' to prevail without the pressure of a salesperson trying to influence their purchase decision.

While legislation applies to protect consumers in door-to-door or telemarketing situations, seminar selling is not covered by a cooling-off period and leaves consumers vulnerable. Companies attract potential buyers, often via telemarketing, to attend an information seminar about a product or service. If consumers attend the seminar of their own volition, no cooling-off legislation applies (the only exception being if the consumer relies on the trader to travel to or from the seminar). The research indicated that in certain circumstances, this may cause problems for consumers. The following case study illustrates one example of this.

CASE STUDY

Self improvement seminar

Terrance was invited to attend a 'free' seminar (only cost was a donation of your choice). At this seminar, he was then sold a further week-long seminar costing more than \$5,000.

"After I had agreed and paid my Visa card I thought maybe I shouldn't have, but I thought it's too late now I have committed it's annoying. You go to these things and they say \$5,500 for this today but usually it's \$7,000 ... you tend to be put on the spot, you have to decide now but you need to look at your bank statements and do the sums."

"If I had known there was a cooling-off period I would have changed my mind."

"There should definitely be a cooling-off period for sales via free seminars ... it's the thing that can get a lot of people sucked in."

One thread running through our consumer interviews was the use of high-pressure sales tactics on potential purchasers. A number of consumers described door-to-door salespeople spending excessively long periods of time in their homes once they had been allowed in. One consumer described how a salesman spent up to four hours demonstrating an education package to the family. Other techniques included the use of tactics targeting vulnerable people and time-limited deals. The following case studies show some examples of sales tactics used on consumers included in the qualitative research.

CASE STUDY

Investment program

Judy received a call at her work regarding an 'investment program'. The saleswoman contacted her a number of times over the next few weeks with stories of success. She also sent a glossy brochure of the program. The investment was a horse racing betting service where you obtain tips each Saturday that you then place on your own TAB account.

Judy made a decision to tell the saleswoman not to call again. However, she soon received another call at an inopportune time. Judy was feeling upset and vulnerable because her work hours had just been reduced. That day, Judy agreed to purchase the program, paying for half the program (\$3,300) over the phone.

Judy became anxious overnight and unsuccessfully tried to cancel the next day. After further unsuccessful negotiations with the company, Judy asked Consumer Affairs Victoria to intervene, and she eventually received her money back. Judy felt the saleswoman had picked up on her vulnerability and exploited it.

CASE STUDY

Education program

Louise and her husband bought an education package for about \$8,000 after an initial phone call and a follow-up home appointment with a salesperson. The program required her children to complete exercises on a computer program and then have their work sent to the company for feedback.

After assessing the academic prowess of her children, the salesman described them as struggling in certain areas – even lagging a couple of years behind their peers. Louise and her husband were shattered: *“We didn’t think they were rocket scientists but at the same time we didn’t want them struggling with their schooling.”*

They questioned whether they should have sent their children to private schools.

“It had me doubting myself, I think.”

Months afterwards, Louise still felt as though she had failed her children.

“I think it was in the hard basket right from the very start, and I really did feel like I failed the kids in some way.”

And of course the ‘today-only’ offer adds to the high-pressure element.

“He sort of said right this has to be done tonight ... and he said sometimes he walks away, then people just don’t worry about it any more and he said that he’d hate for that to happen in this situation.”

“...he just sort of said that, that the way we work is basically to offer it to you tonight and if you don’t take it then the offer is closed ... he said the majority of people don’t get back to us for the pure sake that they have let it slip under the carpet. That’s when he said I hope it doesn’t happen with you, so let’s finalise this tonight. And then he said I will go out to my car for 10 to 15 minutes and you and your husband can talk about it ... and I will come in and we’ll deal with it.”

11.10 Motivations for cooling off

The research also sought to understand what motivated *Exercisers*. Figure 21 shows the reasons *Exercisers* cited for cooling off. Fifty-three per cent of *Exercisers* claimed they cancelled the contract because they found out it was not a good deal or it was not of benefit to them, while 35 per cent felt they were misled by the salesperson or the company, or that the product or service was not adequately described at the time of purchase. Just over one in ten (12 per cent) claimed sales pressure was the reason they cancelled.

Table 7 shows that the reasons for cooling off are consistent across categories.

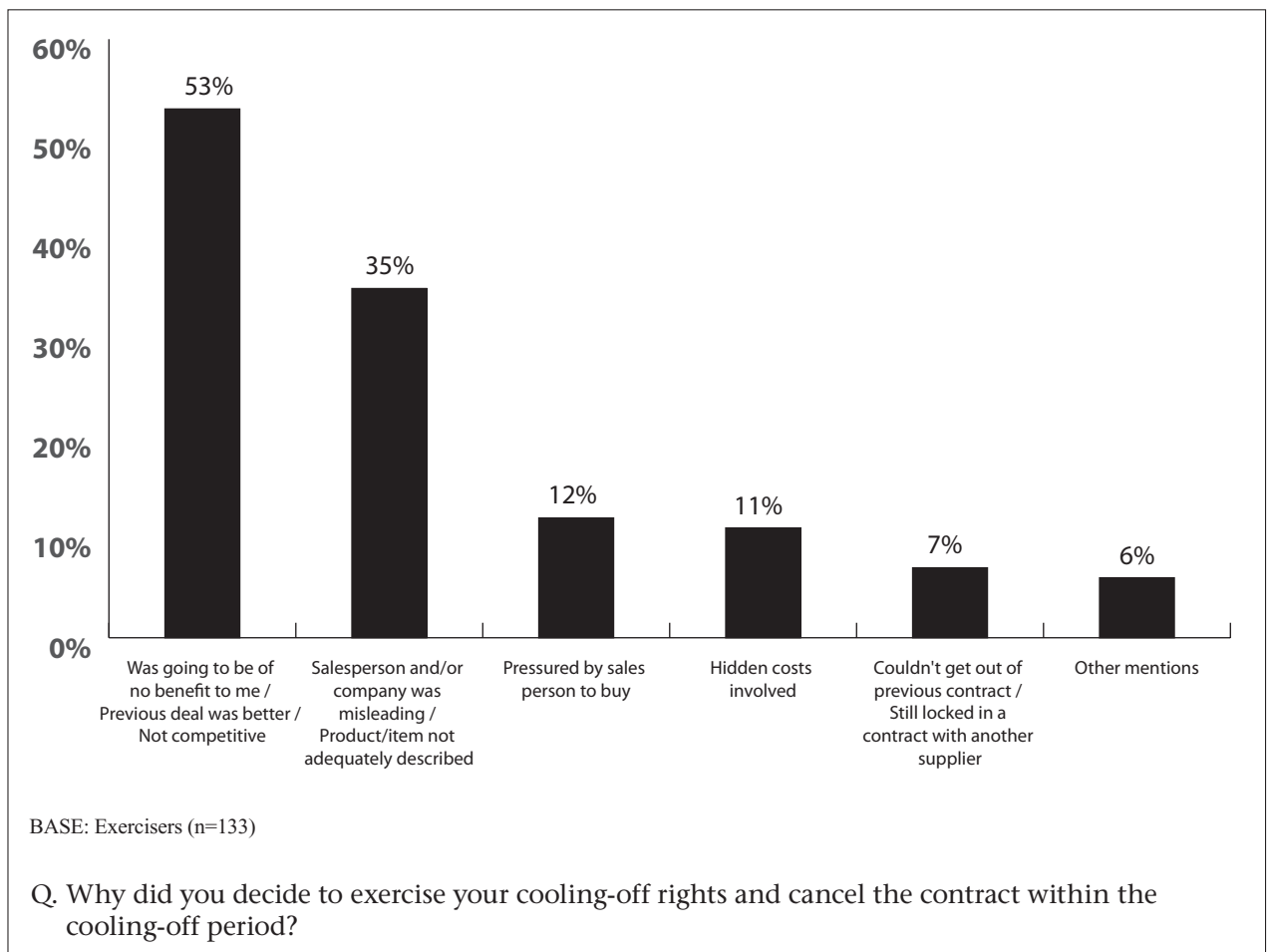


Figure 21 Reasons cited by Exercisers for cancellation of contract

	Gas/ electricity (n=14)*	Net Tele- marketing (n=40)	Net D2D (n=67)
Was going to be of no benefit to me / Previous deal was better / Not competitive	86%	50%	55%
Salesperson and/or company was misleading / Product/item not adequately described	29%	33%	37%
Hidden costs involved	7%	18%	9%
Pressured by salesperson to buy	7%	12%	15%
Couldn't get out of previous contract / Still locked in a contract with another supplier	14%		10%
Other mentions		7%	1%

BASE: Exercised cooling-off right in past two years.
 Note: some small bases.
 Categories with less than n=10 not shown

Q. Why did you decide to exercise your cooling-off rights and cancel the contract within the cooling-off period?

Table 7 Reasons cited by Exercisers for cancellation of contract by category

The qualitative research indicated that cooling-off periods can empower consumers. These benefits range from the negotiation of an extra component or service with the trader, through to feeling empowered to cancel the contract because once informed, the deal actually did not work out to be in the consumer's favour (due to factors such as cancellation costs of the existing contract and usage terms). The following case studies show how consumers can be empowered by the use of cooling-off periods.

CASE STUDY Alarm system

Zack purchased an alarm system via a door-to-door seller.

At the time of the sale, Zack was not informed that he would need to install an extra power point at a cost of \$150. Zack rang the salesperson several times but received no response. Zack then sent a fax informing the company he would cool off if they did not agree to pay for the power point. The salesperson agreed to pay these costs and the alarm system was installed.

CASE STUDY Gas and electricity

Mandy signed up to a new electricity and gas provider after being visited by a door-to-door salesman who made her aware of the cooling-off periods. Mandy contacted her existing provider a few days later after remembering that they suggested calling them if she was offered a better deal by competitors. Her existing provider matched and bettered the new deal. Mandy subsequently exercised her cooling-off rights with the new provider.

As Mandy commented, *"Cooling-off periods give people a chance to put their heads around what's been told to them, get back to their suppliers and sort out... make sure that everything is correct in their mind."*

CASE STUDY

Massage chair

Pam bought a \$10,500 massage chair from a door-to-door salesperson because she thought it might help her husband's back problem. After signing up, she handed over a substantial deposit. Pam and her husband later reflected on the situation and decided *"it would be nice, but no chair is worth \$10,500"* so she exercised her cooling-off period, which the salesperson had informed her about.

Pam felt relieved she had cooled off and felt the experience was positive overall, *"because it is very easy to be swept away, swept along... we are non-income earning people now so ten thousand is a lot of money."*

CASE STUDY

Education and math tutor software

After an initial phone call, Emily and her ex-husband purchased an education and math tutor software package in a home visit from a salesperson for approximately \$50 a fortnight. This provided a computer program for their children to use and follow-up teaching support as needed. The children used it at first, but soon found they didn't want to use it.

Emily was not sure of the exact details of the contract with the company because her ex-husband took care of the financial aspects of the deal. Emily's ex-husband organised to have the program cancelled. There were no problems with the cancellation and Emily felt positive about the company and the way they handled the situation: *"they were really good"*.

CASE STUDY

Mortgage broker

Debbie's husband received a phone call from a mortgage broker, and subsequently invited him to visit their home to discuss their finances and how they could pay off their mortgage five years' earlier.

"He'd been here for one and a half or two hours and I was feeling pushed. I didn't want to go ahead with the hassle of changing over all our finances and refinancing this with that and living off the credit card. It just didn't seem right. So I just asked him if there was a cooling-off period and he said we had 48 hours... so I signed the paperwork and sent him on his way. He wanted some cash but we didn't have any on us so he said he'd just add it to the refinancing stuff."

"The next morning I rang them and told them I didn't want to go ahead with it. They wanted something in writing so I sent them a fax and never heard anything since. Thank god for that. To be honest, I just wanted him to leave and I don't think he would've if I hadn't signed something."

"Really I just wanted him to get out of my house and shut him up."

11.11 Barriers to using cooling-off periods

In addition to understanding the reasons for using cooling-off periods, the research also aimed to determine any barriers to their use. This meant establishing if there were purchasers who were dissatisfied, or had second thoughts about their purchase. Our research revealed that one in four *Purchasers* had second thoughts after their purchase (24 per cent).

This did not significantly differ based on age, gender, or regional differences. However, as Figure 22 shows, there were differences with purchasers' dissatisfaction levels based on their category of purchase. It seems the majority of second thoughts and dissatisfaction occurred because of telemarketing (49 per cent) and door-to-door sales (37 per cent). Purchasers of gas and electricity contracts were less likely to have second thoughts than other door-to-door and telemarketer purchasers.

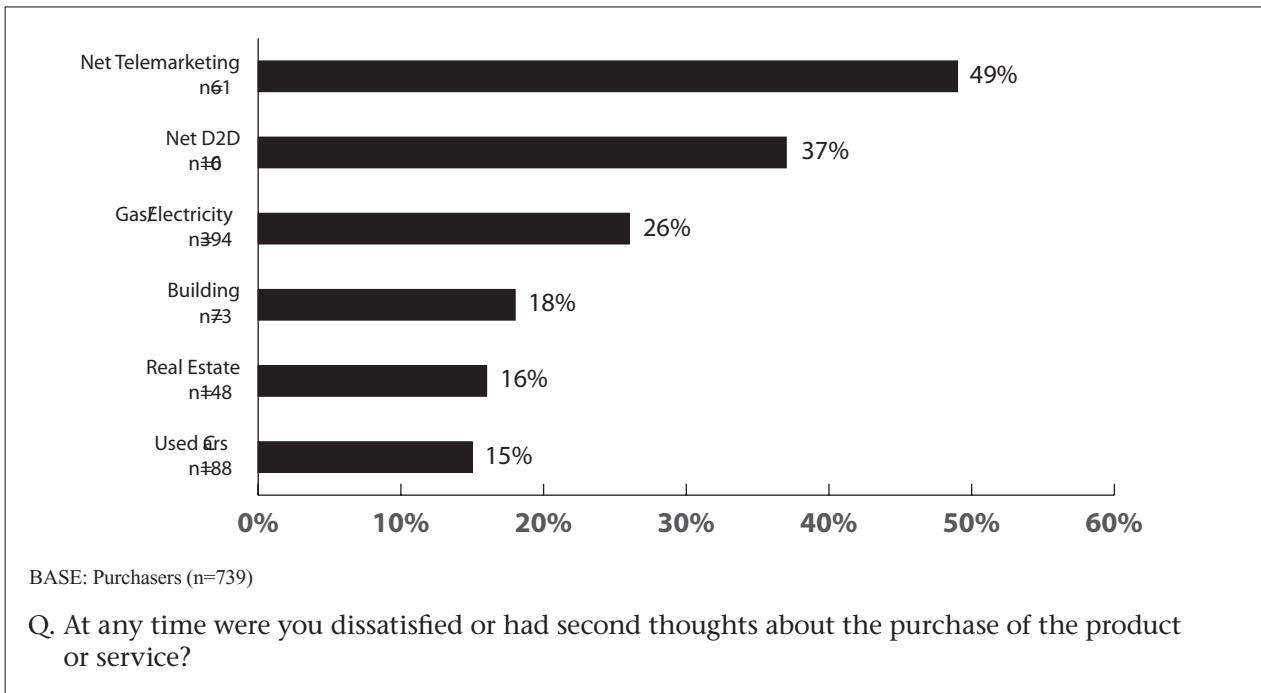


Figure 22 Purchasers' dissatisfaction with product or service by category

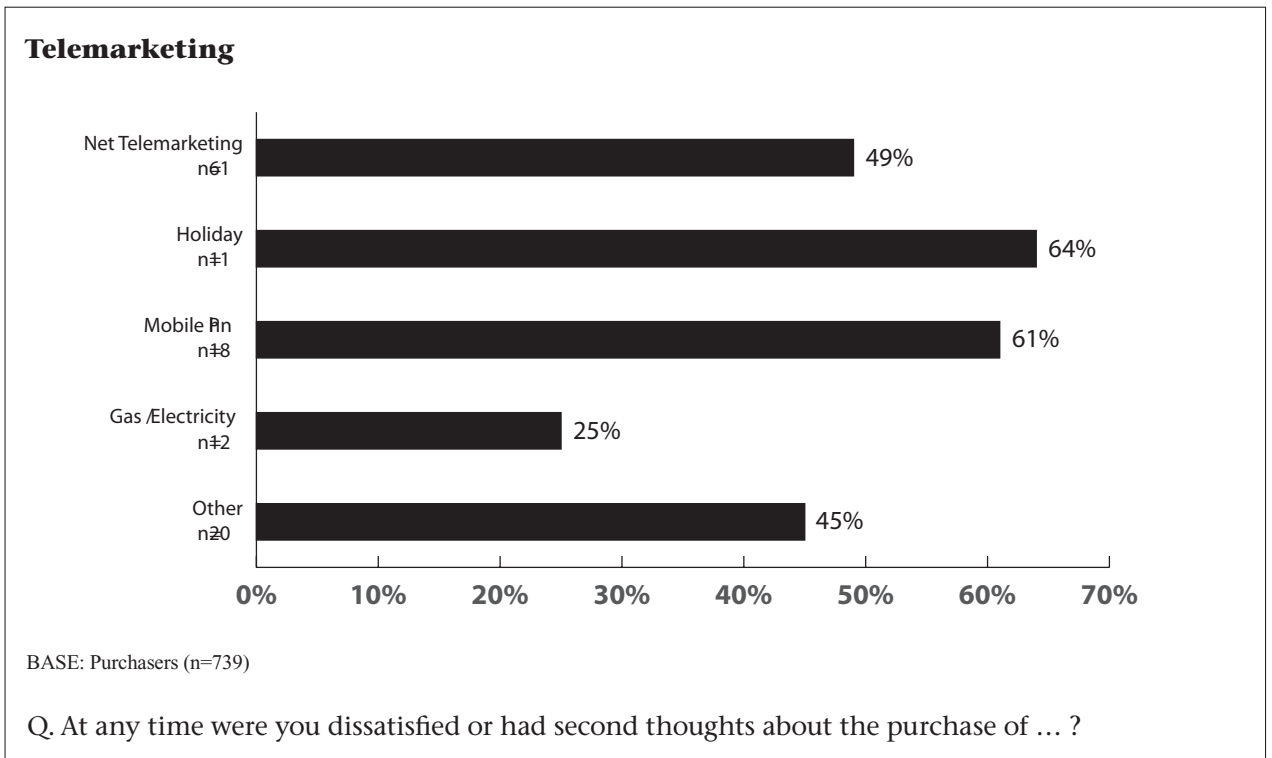
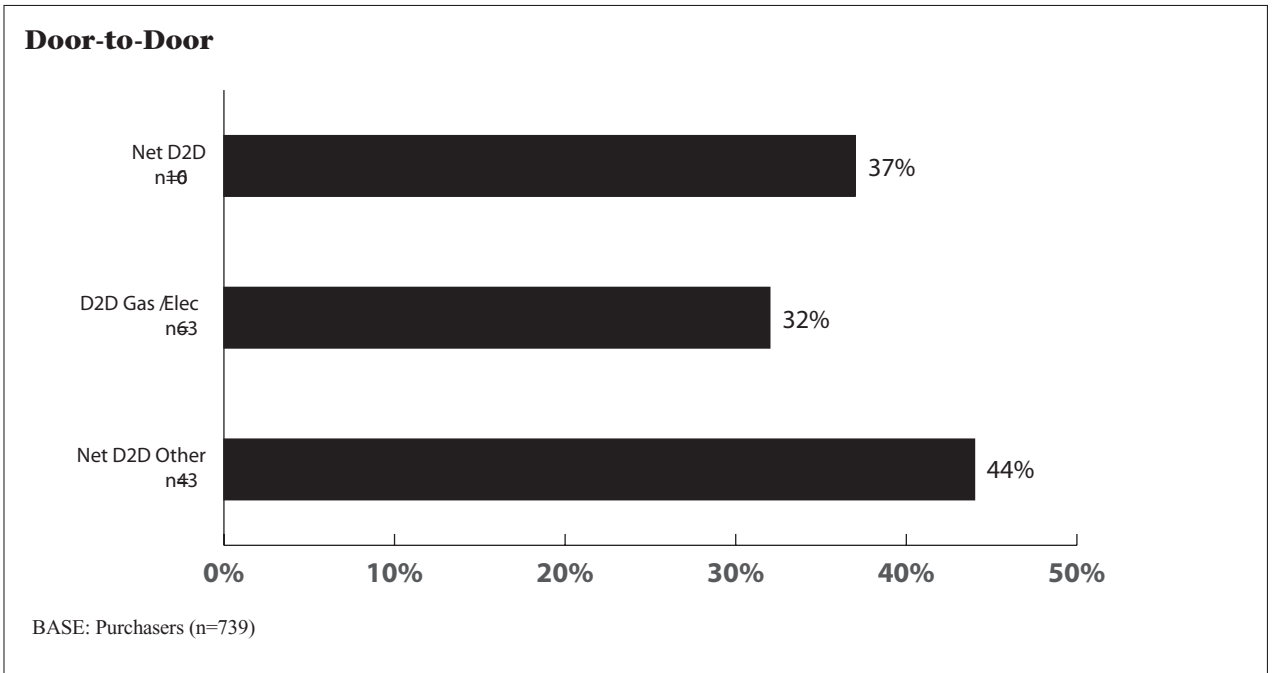


Figure 23 Purchasers of door-to-door and telemarketing products/services' level of dissatisfaction by category

However, the qualitative research identified that not all second thoughts or dissatisfaction can be addressed by cooling-off periods. While one in four purchasers had second thoughts, the qualitative research confirmed many of these are well after the purchase. In these instances, the issue is not necessarily second thoughts in purchasing the product or service, but more a case of the product or service not living up to consumers' expectations. At the time of sale, consumers believe they are going to get a product or service of a certain quality (or have been led to believe is a certain quality). The realisation this may not be the case can come long after the cooling-off period expires.

The following case study explores such dissatisfaction in more detail.

CASE STUDY

Education program

Going back to Louise and her husband who purchased an education package for about \$8,000...

After a period of time, the children were no longer interested in using the education package and she unsuccessfully attempted to cancel the agreement with the company. At the suggestion of her solicitor and some of her friends she contacted Consumer Affairs Victoria who negotiated with the company and managed to get \$1,000 back. The family are now left with an education package they do not use and are out-of-pocket about \$7,000. Louise made the point that the cooling-off periods probably would not have helped them anyway because they entered into the agreement believing the program would be useful for their family. It would have required more than 10 days to assess the program's usefulness.

"I would have been uncomfortable sending it back ... because I hadn't really given it a go."

"At the time you think you're purchasing it not to return it. Like going and buying clothes, you don't, you don't want to have to take them back. We weren't thinking that we were going to take it back... We weren't going to pay \$8,000 for something that we thought mightn't work."

The notion that many consumers have second thoughts long after the expiration of the cooling-off periods is also supported by the quantitative data. When dissatisfied purchasers were asked why they did not cool off, almost a quarter (23 per cent) said the cooling-off period had finished.

The results also highlighted how increased education about cooling-off rights could increase their use. For example, dissatisfied purchasers reported a number of reasons for not cancelling that would likely be lessened if they had been educated adequately. Apart from the cooling-off period having passed, other reasons consumers cited for not using their cooling-off rights included 'I didn't think about it' (16 per cent), 'It seemed too hard' (9 per cent), 'I didn't want to incur the financial penalty' (5 per cent), 'I felt intimidated by the sales person/company' (5 per cent), and 'I didn't know there was a cooling-off period' (3 per cent).

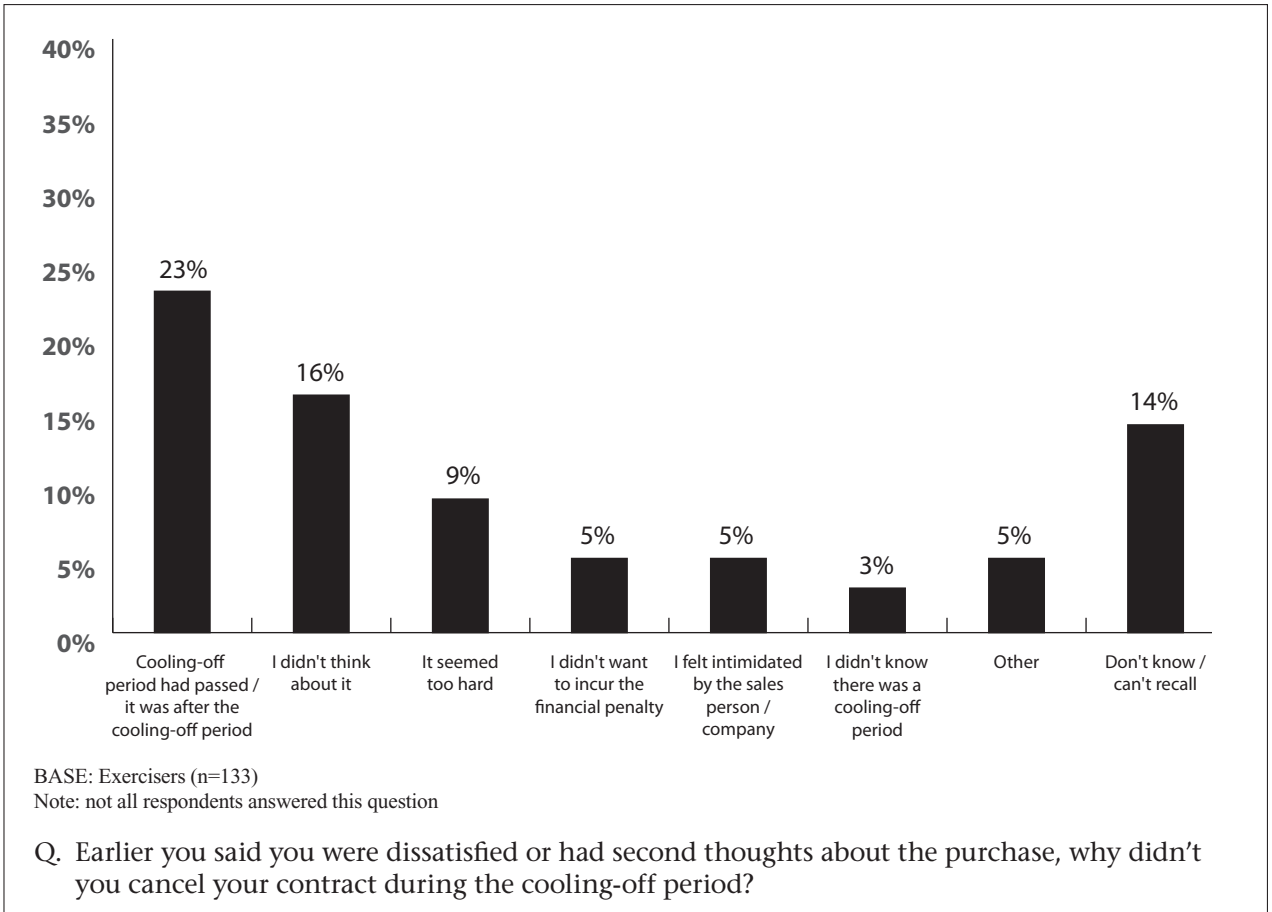


Figure 24 Reasons for dissatisfied purchasers not exercising cooling off

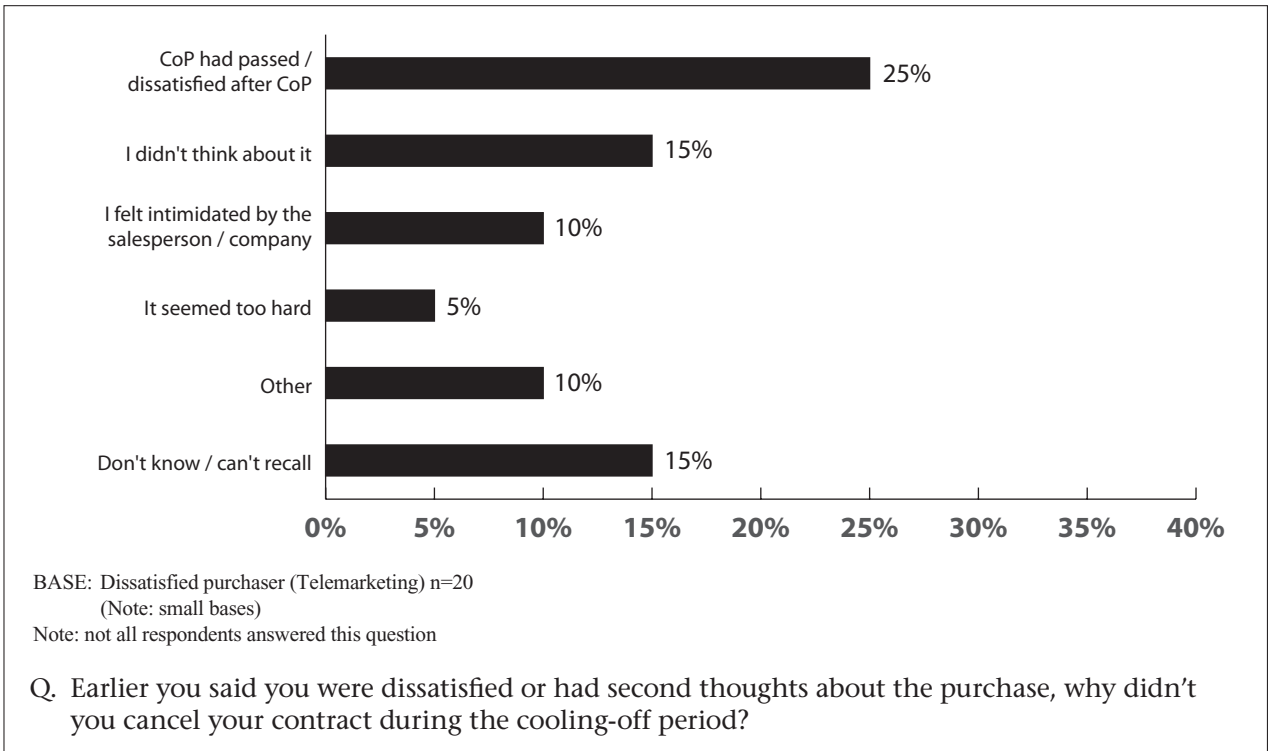


Figure 25 Dissatisfied telemarketing purchasers' reasons for not cooling off

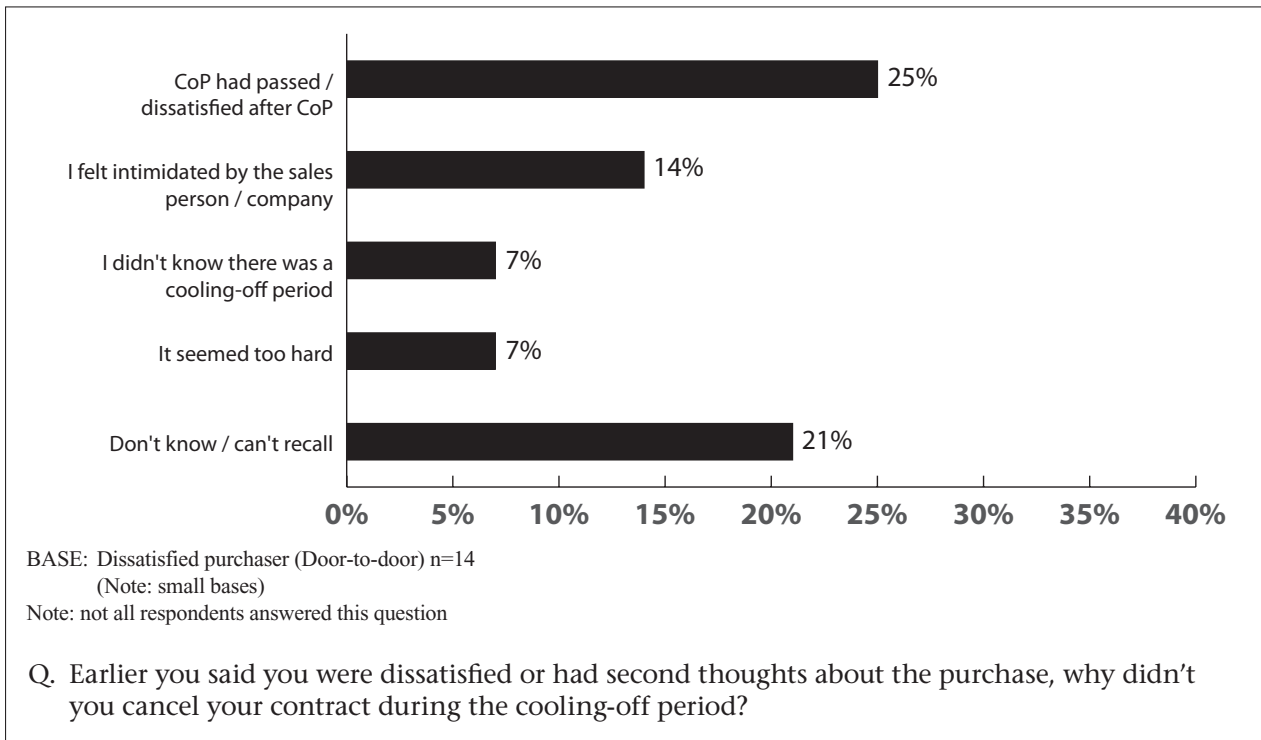


Figure 26 Dissatisfied door-to-door purchasers' reasons for not cooling off

While education may address some of the barriers to consumers exercising their cooling-off rights, the qualitative research highlighted a number of other barriers. For example, some consumers reported getting the 'run around' from companies when they try to cool off.

Consumers can also feel an element of embarrassment, believing they have been 'suckered' into purchasing some products. In some instances, this embarrassment prevents them from even attempting to cool off, get advice or even contact the company. Some consumers reported feeling intimidated by the salesperson or company, and this can prevent them from cooling off.

Finally, a lack of specific knowledge of timeframes, financial consequences and process all add to the confusion for consumers. This lack of knowledge adds to the uncertainty that they already have about their unwanted purchase and for many, prevents them from attempting to cool off.

The following case studies highlight some of these barriers.

CASE STUDY Holiday vouchers (1)

Sally was cold-called by a company that sold accommodation vouchers. She told the saleswoman she was not interested but the saleswoman said the company would also provide a supermarket discount card. Sally felt the \$139 price tag was good value because she would easily recoup the cost with supermarket savings.

On receipt of the goods, she was disappointed because the vouchers were for towns she would never visit and she would have to pay another \$199 for the discount card. Sally tried to cancel within the cooling-off period, but experienced tremendous difficulty in contacting someone who would deal with her complaint. After a frustrating period where the company avoided meaningful contact with her, Consumer Affairs Victoria intervened on her behalf and she eventually got her money back.

“I rang the number and explained and they said ‘I don’t know what you are talking about, and we’ll get someone called Darren to ring you back’ – well Darren didn’t ring me back so then I rang again the next day or a couple of days later and Darren was in a meeting – and then the third time I rang no one even knew who Darren was and I got quite frustrated about all of this.”

“I did outline my complaint to somebody taking the message on the second go and I sent an email, that’s right, asking for them, you know, to get back to me and I heard nothing. I sent that through Outlook Express to their email and I never ever received an answer.”

“And then the final call I got, I had an argument with a woman ‘cause she basically sort of laughed at me and I said look, there is a cooling-off period with these kinds of things and I, let’s just say that I have changed my mind – I would never have bought it if I’d known that. And I said, I want my right to change my mind, and she laughed. She said cooling-off period? You have to be joking. What, it’s now whatever how many weeks or whatever it was. I said that would be because no one will answer my call or email. And she got quite offhand with me and dismissive and I got upset and angry and I said I want to speak to the manager.”

CASE STUDY Holiday vouchers (2)

Darren purchased accommodation vouchers after a telemarketing call. The next day he decided to cool off after talking to his adult sons and rang up the company to do so. They told him he could not do this until he got the actual package in the mail with cooling-off details in it. This was a problem for Darren because he was away from home for four weeks and so could not receive the mail.

Darren organised mail redirection while he was away so his sons could cancel the product. Upon receipt of the package, his sons tried unsuccessfully to cool off in their father’s absence and actually returned the product back to the company office. After returning home, Darren tried unsuccessfully to contact someone in the company to help. No one was interested in talking to him. Darren eventually contacted Consumer Affairs Victoria and received a refund cheque after we intervened on his behalf.

“...they wouldn’t honour the cooling-off period because they were duck shoving all time ... they weren’t happy, not happy Jack. Whether it was phone or whether it was my sons, direct speaking to them or anything. Ah and they were trying to, you know use every little thing to not have the cooling-off period activated, it was eminently clear, eminently clear.”

“I’m sure this, their company idea was to get out of the cooling-off period by making it, you know, you can’t apply the cooling-off period until you get the goods and the goods don’t turn up ‘til very close to the end of the cooling-off period. In fact in some cases, the goods mightn’t arrive until after the end of the cooling-off period so I’m not sure. I believe the cooling-off period should be from the time, not when you enter the contract, but when you have the goods supplied.”

CASE STUDY

Education program

Lisa and her husband were cold called by a salesman offering free in-home assessment of their children's academic ability. After many hours of sales pressure they relented and purchased an education program for just over \$6,000. In the next week or so, Lisa was very uncomfortable about the purchase, although her husband believed it would be beneficial for the children. Lisa and her husband argued a lot in the days leading up to the end of the cooling-off period about whether to cool off. In the end, a combination of embarrassment and fear prevented the family from exercising their cooling-off rights.

"In the end, you know, I think we just felt embarrassed, and we kept going ahead with it sort of thing. Look I thought about it, but in the end really basically I was too embarrassed... and then about a week after all of this happened it was on A Current Affair and all those blinking shows... about all these people getting signed up to this tutor thing. It was on high finance and they were marketing single parents and that sort of thing and everyone was struggling paying it back and you should do it for the interests of your children... and we're just sitting there going oh my God... That sort of added fuel to the fire in that we're not going to say anything and admit how stupid, sort of thing ... which is probably wrong, but yeah I did want to contact Consumer Affairs and see if there was any way that we could get out of it."

Lisa also explained that she felt quite a bit of pressure from the salesman at the initial meeting and explained that part of her reason for not contacting the company when she was thinking about cooling off was the potential for further intimidation by the salespeople. She was intimidated by the details on her contract and was concerned there may be financial repercussions if she tried to cool off with no adequate reason.

"Well I thought I was going to get intimidated like by the pressure... why, you know, have you changed your mind? And then I thought, what we were saying wasn't a good enough reason for them, sort of thing."

(Reading from her contract...) "Well it says you may still be required to pay a fair price for goods which can not be returned to the supplier, unless you entered into the agreement because the supplier or the supplier's agent made a false or misleading representation about your need for the goods. So I thought, well, maybe they can't take it back because they have put it on the computer, that sort of thing, so yeah...and then the last paragraph says if you cancel this agreement during the cooling-off period the supplier is entitled to apply to the Civil and Administrative Tribunal for an order that you have to pay a reasonable amount for the services that you received before you cancelled the agreement. Yeah, so that was sort of ...Oh my God – what? Is my reason going to be good enough? Ahhhhhh!!!"

To understand what barriers exist in the broader community, we asked our sample to rate the extent to which they agreed or disagreed with a number of statements about cooling-off periods.

The vast majority (91 per cent) felt that cooling-off periods are an important safety net for consumers. However, although a safety net in the form of cooling-off periods exists, a lack of knowledge means that not all consumers feel empowered by cooling-off periods. Figure 27 shows that 44 per cent of Victorians do not know enough about cooling-off periods to feel protected by them. Adding to the difficulty, 29 per cent of Victorians felt it was too hard to cancel a contract even with a cooling-off period and 25 per cent would feel personally uncomfortable if they were to cancel a contract, even if there was a cooling-off period.

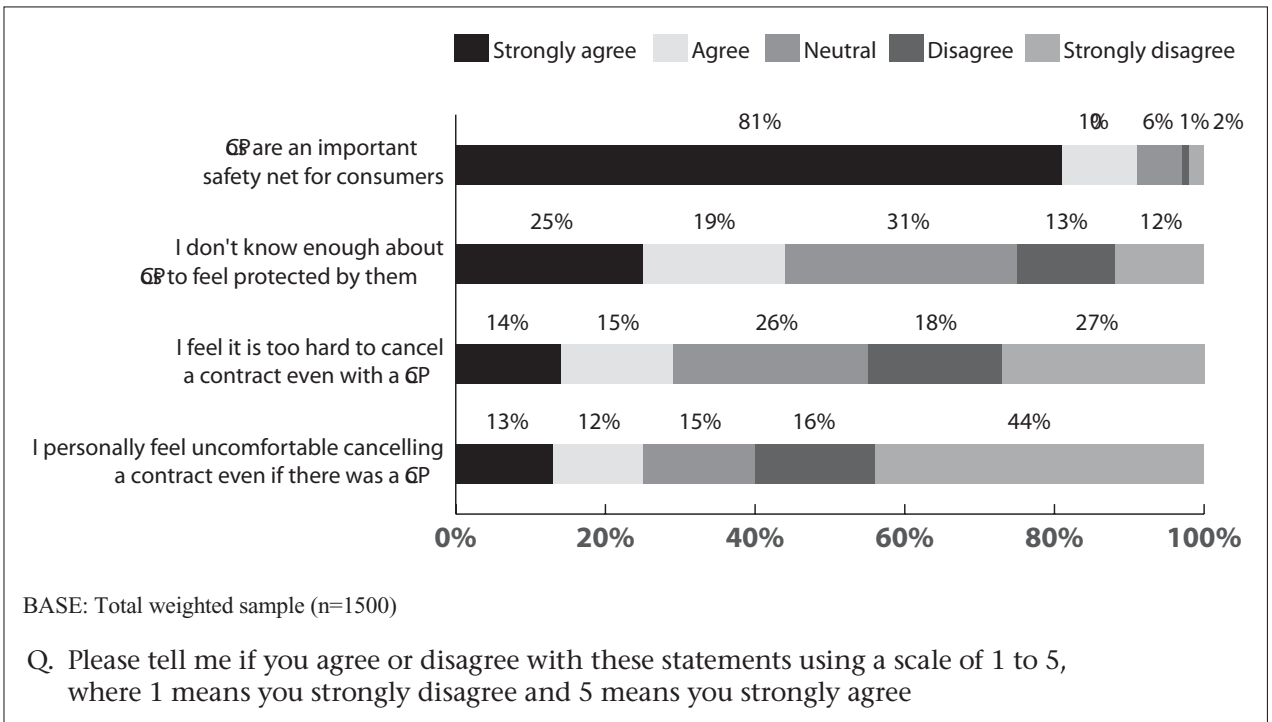


Figure 27 Victorians' perceptions of cooling-off periods

Exercisers are clearly more comfortable with cooling-off periods (see Figure 28). Fifty-five per cent of *Exercisers* disagree that it is too hard to cancel a contract with a cooling-off periods, compared to 45 per cent of *Purchasers*. Similarly, 73 per cent of *Exercisers* disagree they would feel uncomfortable cancelling a contract

versus 61 per cent of *Purchasers*. This qualitative research highlighted that most *Exercisers* were more inclined to using their cooling-off rights again because having exercised their rights, they were more informed of the process, and felt empowered.

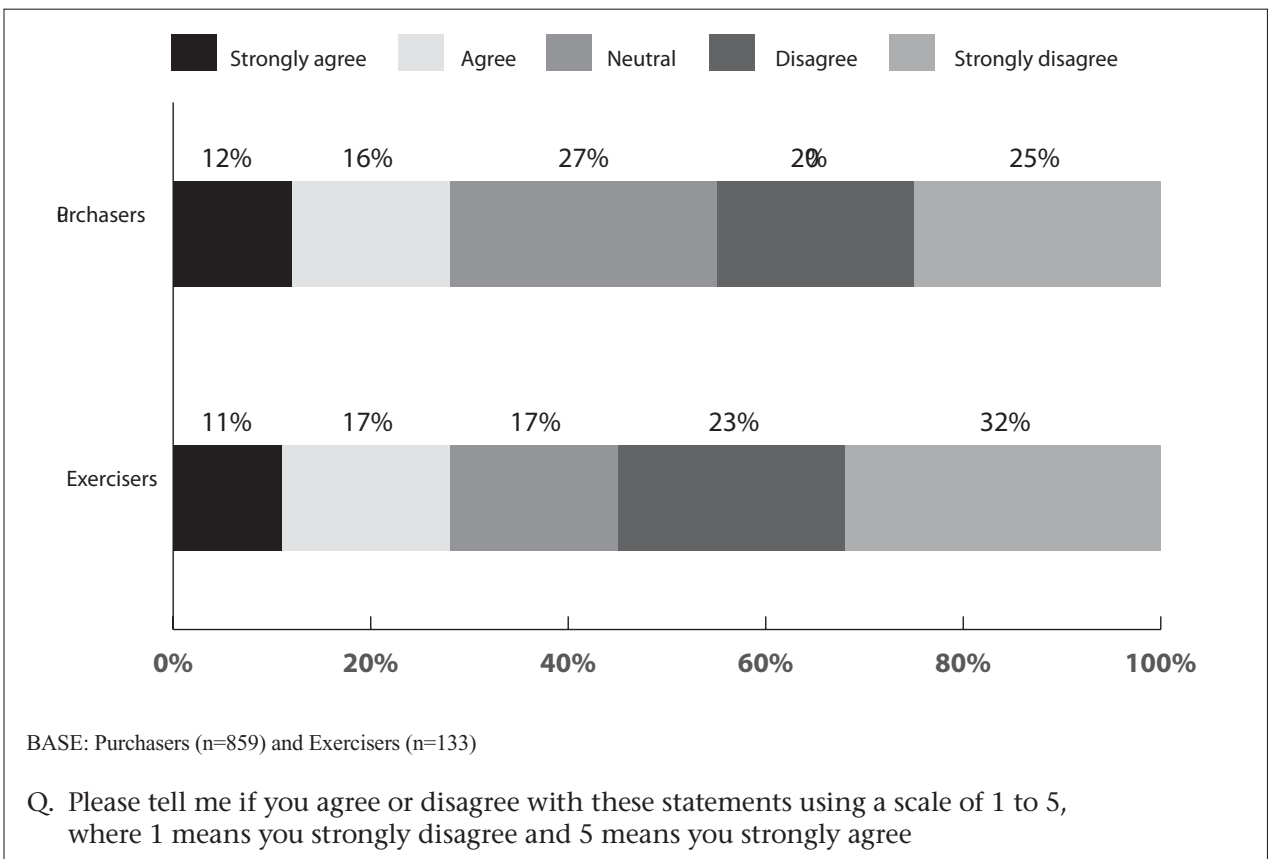


Figure 28 Perceptions of cooling-off periods by Exercisers and Purchasers

11.12 What should cooling-off periods apply to?

To conclude the study, consumers were asked what purchases cooling-off periods should apply to. As shown in Figure 29, consumers believe cooling-off periods should apply to a number of purchases not currently covered by legislation. For example, 42 per cent of Victorians report that new cars should be covered, along with real estate bought at auction (35 per cent), used cars bought privately (29 per cent) and high value purchases including white goods (18 per cent).

Exercisers tended to prefer a more limited approach than *Purchasers* (see Figure 30). For example, 42 per cent of *Purchasers* state cooling off should apply to a new car compared to 29 per cent of *Exercisers*.

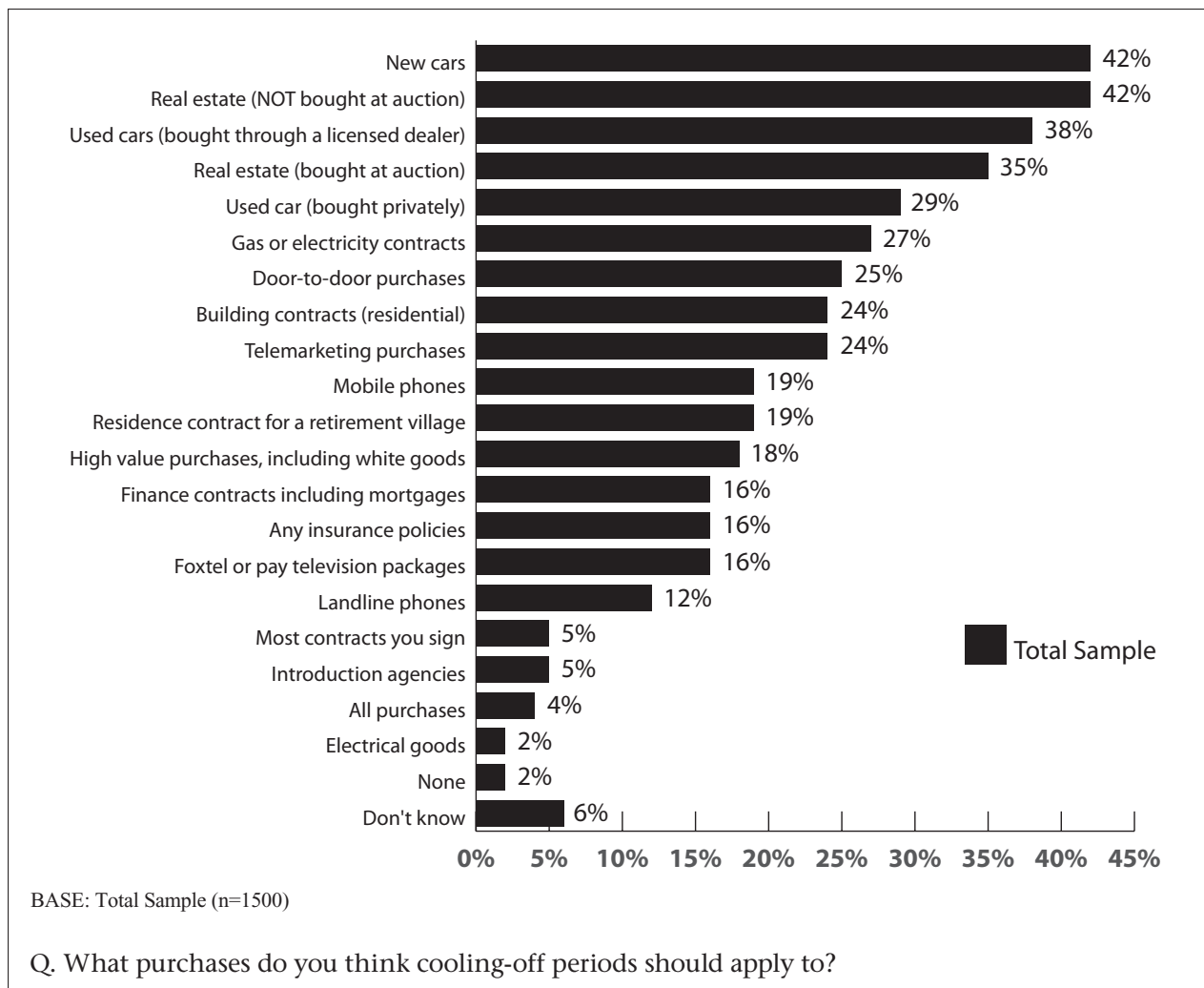


Figure 29 Perception of purchases consumers think cooling-off periods should apply to

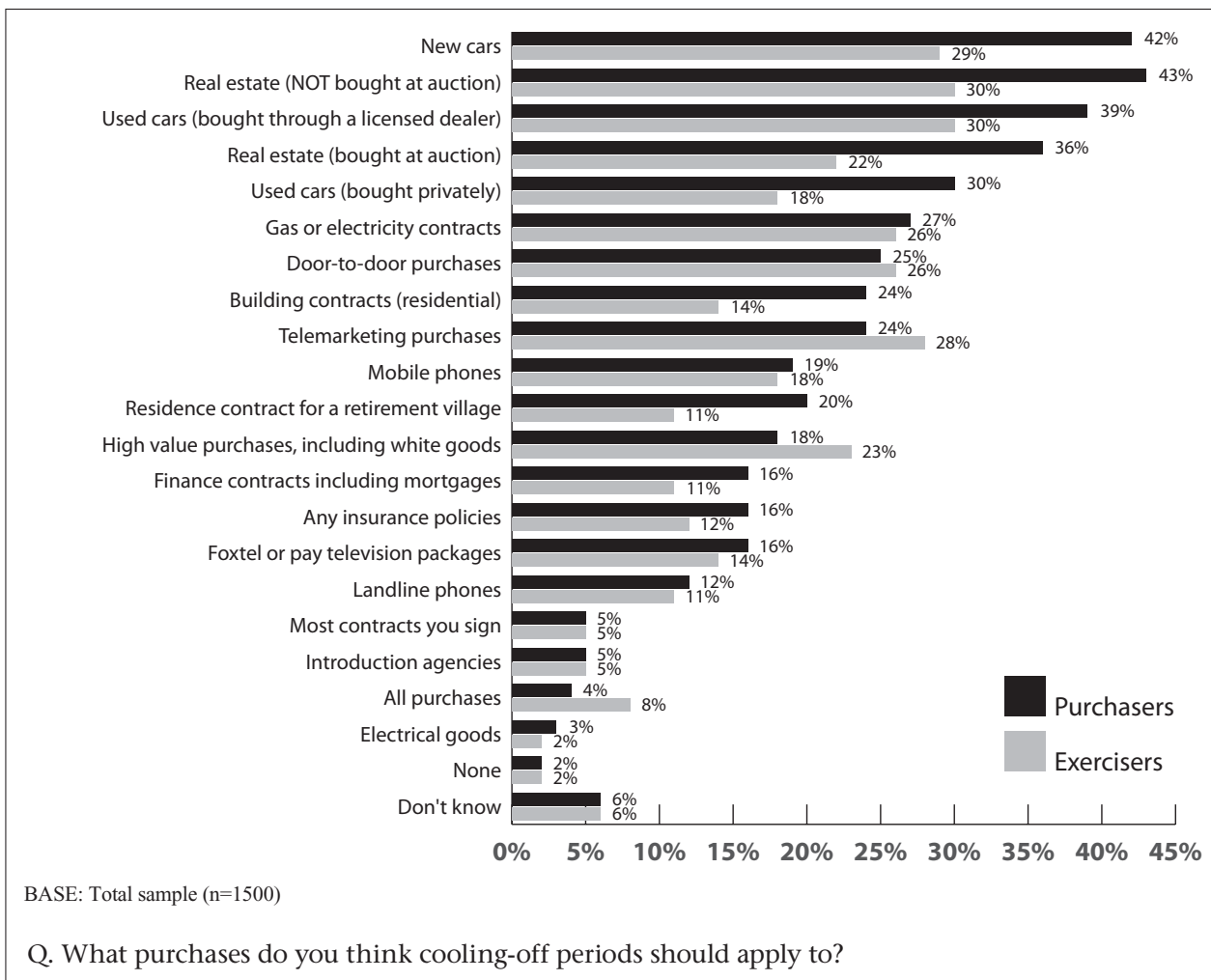


Figure 30 Purchases consumers believe cooling-off periods should apply to divided by Purchasers and Exercisers

11.13 How long should cooling-off periods be?

Finally, consumers were asked what period they thought the minimum cooling-off period should be to cancel a contract (regardless of what was being purchased). Most Victorians felt that the cooling-off period should be more than three days (See Figure 31). Almost half of respondents believe the minimum cooling-off periods should be 10 days and only 20 per cent believe that three days or less is sufficient.

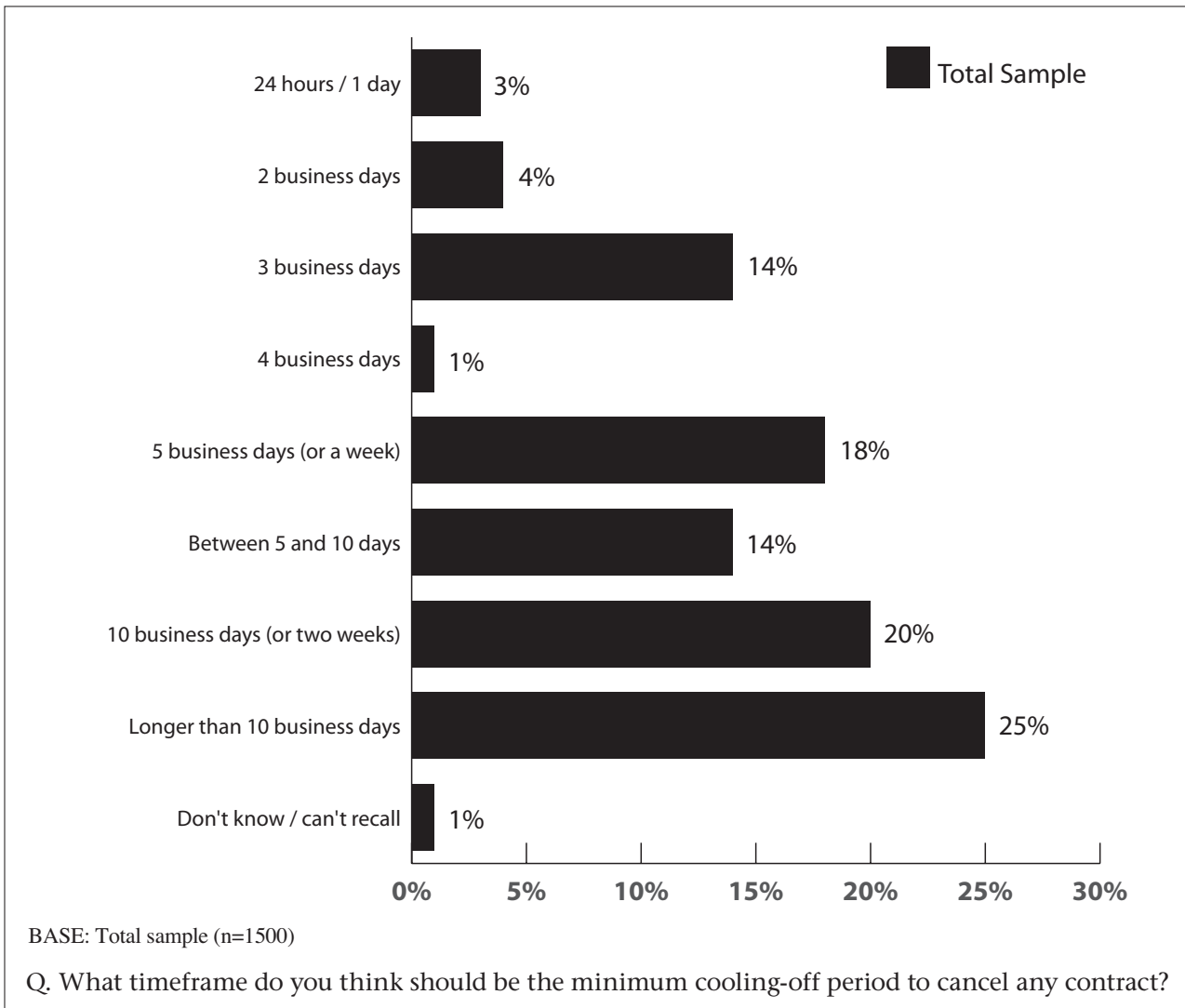


Figure 31 Minimum cooling-off period

Comparing the results for *Exercisers* and *Purchasers*, the survey indicated that *Exercisers* are more likely than *Purchasers* to say the period should be longer (see Figure 32).

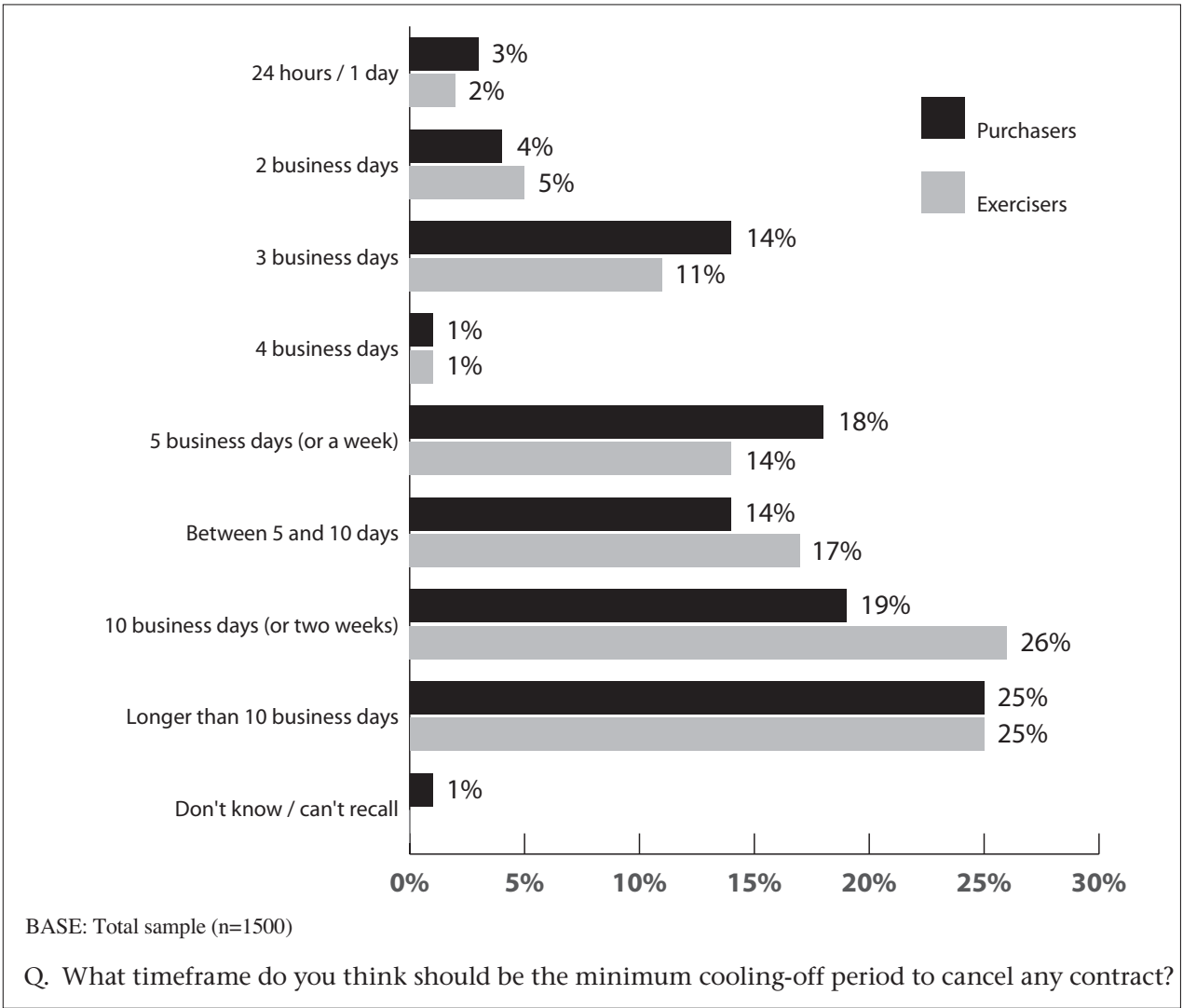


Figure 32 Minimum cooling-off period divided by Purchasers and Exercisers

“Appendix A: Case studies of cooling-off periods”

A number of industries in Australia and overseas have mandated cooling-off periods for consumers so they may reach a decision or agreement after reflecting calmly on potential outcomes, away from high-pressure environments. This attachment illustrates how cooling-off periods have been used in a range of industries by presenting case studies of cooling-off arrangements for direct selling in the USA, distance selling and credit agreements in the UK, financial products in Australia and funeral funds in NSW.

A1.1 Cooling-Off Rule – United States of America⁴

While many stores in the USA may not allow the consumer to return merchandise if they change their mind, at the time of purchase consumers do have the option of walking away and thinking about whether or not they really want the item. With direct selling, however, consumers are approached in their homes or lured to temporary selling locations with promises of free items or services only to be surprised with high-pressure sales pitches. Rarely is the consumer given a day or two to think about the sale; they are often pressured to buy the day the seller meets with them.

The Cooling-Off Rule was introduced to address:

The specific problem of sales being obtained through high pressure and deceptive sales tactics used on consumers at times and places in which consumers typically may not expect to be solicited for sales and find it difficult to extricate themselves from the situation.

Coverage and scope

The three-day Cooling-Off Rule ‘covers sales made at the buyer’s home, workplace, dormitory, or a temporary workplace of the seller, such as a hotel or motel room, convention centre, fairground or restaurant’.

However, the Cooling-Off Rule does not apply in all situations. Exceptions include:

- sales made at the seller’s usual place of business
- sales made exclusively by mail or phone
- real estate, insurance, and securities sales
- sales for emergency home repairs
- sales that begin in the seller’s usual place of business and finish with a contract signing in the consumer’s home
- sales of goods or services not intended for personal, family, or household purposes.

The Cooling-Off Rule is covered by Part 429 — *Rule concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*. The US FTC, which administers and enforces the rule, promulgated the Cooling-Off Rule on 26 October 1972. It was amended on 1 November 1973, 19 November 1973 and 10 November 1988.

⁴ The information for this section was drawn from the FTC fact sheet ‘The Cooling-Off Rule’, Federal Register, 1995, *Rules and Regulations* vol. 60, no. 203, Electronic Code of Federal Regulations, Title 16: Commercial Practices, Part 429 <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=2192761dcd931a4625ce52b53d5efcc8&rgn=div5&view=text&node=16:1.0.1.4.46&idno=16> and Consumer Action Website ‘Shopping from home—3-day cooling-off rule’ http://www.consumeraction.gov/caw_shopping_cooling_off.shtml

A1.2 Distance selling and online trading (UK)⁵

The Rule allows three days to cancel purchases of \$25 or more. The right to cancel for a full refund extends until midnight of the third business day after the sale. The salesperson must inform the consumer about cancellation rights at the time of sale. The salesperson must also provide two copies of a cancellation form (one to keep and one to send) and a copy of the contract or receipt. The contract or receipt should be dated, show the name and address of the seller, and explain the right to cancel. The contract or receipt must be in the same language used in the sales presentation.

The consumer does not have to give a reason for cancelling the purchase. They have the right to change their mind.

Process for cooling off

To cancel a sale, the consumer must sign and date one copy of the cancellation form provided at the time of sale. They must then mail it to the address given for cancellation, making sure the envelope is post-marked before midnight of the third business day after the contract date. If the seller did not give cancellation forms, the consumer can write their own cancellation letter. As with the 'official' form it must be post-marked within three business days of the sale.

On cancelling the purchase, the seller has 10 days to:

- cancel and return any promissory note or other negotiable instrument signed by the consumer
- refund all the consumer's money and tell them whether any product they still have will be picked up
- return any trade-in.

Within 20 days, the seller must either pick up the items left with the consumer, or reimburse them for mailing expenses, if they agree to send back the items.

If the consumer received any goods from the seller, they must make them available to the seller in a condition that is as good as when they received them. If the items are not made available to the seller — or if an agreement was made for the consumer to return the items but they fail to do so — the consumer remains obligated under the contract.

Coverage and scope

In the UK, 'distance selling' is when a consumer buys goods or services from a trader without having face-to-face contact with them. Examples of distance sales include goods and services bought:

- by telephone or fax, including text messaging and mobile phones
- by mail order
- electronically through the internet, email or digital television
- through a shopping channel or teletext
- from a catalogue
- through a newspaper or magazine advertisement order form.

Such transactions are covered generally by normal consumer protection legislation. They are also covered by special distance selling regulations, which stipulate that when selling to consumers by distance selling, the seller must provide the consumer with a cooling-off period during which the consumer has an unconditional right to cancel the contract.

- In the case of services, the cooling-off period normally ends seven working days after the day the order was made, or after written confirmation is received.
- In the case of goods, the cooling-off period normally ends seven working days after the day the goods are received.

The right to a cooling-off period is provided through:

- The Consumer Protection (Distance Selling) Regulations 2000 Statutory Instrument 2000 No. 2334
- The Consumer Protection (Distance Selling) (Amendment) Regulations 2005 Statutory Instrument 2005 No. 689.

⁵ Information for this section is drawn from OFT Press Release 133-06 'OFT issues guidance on distance selling regulations' <http://www.of.gov.uk/news/press/2006/133-06>, Compact Law http://www.compactlaw.co.uk/free_legal_articles/distance_selling_regs_2000.html

The regulatory bodies that enforce the regulations are the Office of Fair Trading in England, Scotland and Wales, and the Department of Enterprise, Trade & Investment in Northern Ireland.

The regulations only apply to consumers who purchase goods or services from a business. They do not apply to business-to-business purchases, land sales, vending machine purchases, and purchases made by auction. However, the regulations are applicable to both land rentals, and TV and internet auctions.

These regulations also do not cover any financial services sold at distance. Distance selling of financial services is covered separately by the Financial Services (Distance Selling) Regulations.

Consumers cannot cancel if the contract is for:

- accommodation, transport, catering or leisure services
- package travel and timeshare arrangements
- food, drinks or other goods delivered regularly to the consumer's home or workplace by a 'regular roundsman' such as a milkman or domestic oil supplier
- goods made to the consumer's specification
- goods that are perishable or cannot be returned, such as frozen food and fresh flowers
- audio or video recordings or computer software that the consumer has opened
- newspapers or magazines
- betting, gaming and lotteries
- premium-rate telephone and website services
- services that begin, by agreement, before the end of the cooling-off period.

Consumers have the right to clear access to 'prior information'. This requires the supplier to provide:

- their business name and geographical location if payment is received in advance (PO Box numbers are not acceptable)
- the price of the goods or services on offer, including any hidden costs such as value-added tax or delivery costs
- a satisfactory description of the goods or services on offer
- the arrangements for purchases as well as any applicable deliveries that may be made.

The intent of the regulations is to ensure that consumer rights are upheld when the consumer is not physically in attendance at the time of purchase. One aim of the cooling-off period is to give consumers an opportunity to examine the goods or services in the same way they would when buying in a shop. Although consumers receive prior information, it may not adequately 'describe' a product (for example, a picture does not show how well a pair of shoes will fit). This right is also intended to entice new consumers into the advantages of shopping at a distance (lower prices, wider choice, home delivery).

The cooling-off period helps ensure the consumer is fully aware of, and can reflect on, the terms and conditions of the sale and can make a fully-informed choice before the contract is regarded as completely finalised and binding on the consumer.

Process for cooling off

The direct selling regulations state that, if they change their mind, consumers are allowed to cancel the purchase and receive a full refund within 30 days, making the goods available to be 'restored' to the supplier. If agreed before the purchase, the consumer may be asked to pay the return postage charge. Charging for delivery and recovery in the event of cancellation is a commercial decision for the business and will affect a consumer's choice between competing suppliers.

If the seven-day cooling-off period was not stated in the original terms and conditions of the contract, the consumer is automatically entitled to a three-month period in which they can still change their mind about the purchase. Also, the right to cancel or withdraw can be exercised by the consumer even once the goods or services have been provided.

The regulations require that once the consumer has decided to cancel the purchase they must inform the seller in writing — by letter, fax or email — of their decision. The effective date of cancellation is the date on which the notice is sent. Ownership of the goods then reverts to the supplier and the consumer is required to take reasonable care of any goods that have been supplied.

A1.3 Credit agreements (UK)⁶

The aim of the *Consumer Credit Act 1974*, including the cooling-off period, is to enable the consumer to gain a better understanding of the agreements they are entering into.

Consumers may be pressured into taking out credit agreements or lured by low interest rates or 'freebies'. The cooling-off period allows the consumer to reflect on their decision and make a more informed choice without any attendant pressure. It allows consumers who enter into credit agreements or hire-purchase agreements, which are signed away from the premises of the lender, to change their mind and cancel the agreement during the cooling-off period.

Coverage and scope

The cancellation period starts when the debtor signs the agreement, which must be in writing and must include information on the rights to cancel. The cancellation period ends five days after the debtor receives the second notice of cancellation rights (usually contained in a second copy of the agreement). It applies if the consumer signs the agreement in their home or anywhere else away from the credit company's office.

In relation to second mortgages (not exceeding £25,000) granted by finance companies, a debtor has a pre-contract cooling-off period in which they can decide, undisturbed, whether or not to proceed with the loan. This cooling-off period lasts between seven and 14 days.

The cooling-off period provisions are set out in ss. 67-73 of the *Consumer Credit Act 1974* and the system is administered by the Office of Fair Trading. The Act requires:

- all agreements to be in writing
- full written details of the true interest rate (APR) to be quoted
- the provision of a cooling-off period during which borrowers can change their minds and cancel agreements.

Process for cooling off

If the debtor wants to cancel a credit agreement, the cancellation must be sent to the lender within five days of the debtor receiving the notice of the cooling-off right, preferably by recorded delivery. Such a notice cancels the credit agreement and any linked transactions. The credit provider must then refund any charges the debtor already paid.

If the credit agreement involved the purchase of goods and the consumer cancels the agreement during the cooling-off period, they must also:

- take reasonable care of the goods. This duty lasts for 21 days after cancellation
- return the goods to the supplier if asked in writing, either in advance or when they come to collect them. If the consumer does not hand the goods over when requested in writing, and the request was made within 21 days of cancellation, they must take care of the goods until hand delivered or posted back at the consumer's expense
- return any money advanced under the agreement
- pay for goods installed, for example, a conservatory or a fitted kitchen, if they were supplied before the cancellation form was sent to meet an emergency.

The supplier must:

- if they want to collect the goods, request this within 21 days of cancellation
- return any goods given in part exchange (or give a cash equivalent) within 10 days of serving of the notice of cancellation
- return any payments made, for example, deposits and instalments
- not ask for payment for perishable goods or goods 'consumed by use', for example, fuel or spare parts.

If the consumer has made a pre-payment for the goods or services bought on credit (as a deposit or part-payment), they should get all of the money back when the agreement is cancelled unless the consumer arranged their own credit.

⁶ Information for this section came from Advice Guide 'Debt In England' <http://www.adviceguide.org.uk/index/life/debt/credit.htm>

A1.4 Financial products (Commonwealth)⁷

Coverage and scope

The cooling-off period for financial products provides retail clients, but not institutional clients, with the right to return a financial product and have their money refunded. The cooling-off period does not apply in some situations. These are set out in the Corporations Regulations r7.9.64 and include:

- a managed investment product which is listed or will be listed shortly after it is issued
- where the managed investment product is not liquid in accordance with chapter 5C (section 601KA) of the Act at the time it is issued.

The cooling-off period for investors in financial products was introduced as part of the financial sector changes on 11 March 2002. The relevant provisions are contained in Part 7.9, Division 5 of the *Corporations Act* and the associated regulations.

There is a 14-day period for exercising the right of return, which starts from the time the investment is confirmed by letter, fax or email. If the consumer does not receive confirmation, the cooling-off period begins at the end of the fifth day after the product was issued.

The amount to be repaid will vary according to the current market value of the product. Therefore, the holder bears the investment risk and enjoys any investment rewards that arise during the cooling-off period.

The amount repaid may also be reduced on account of tax, duty and reasonable administration and transaction costs. However, there are special rules relating to these deductions. For example, the administration and transaction cost must be reasonably related to the acquisition of the product and the subsequent termination. It must not exceed the true cost of an arm's length transaction. The payment of commissions or similar benefits is specifically excluded.

Where the cooling-off period applies, a product disclosure statement should describe the retail client's right to return the product.

Process for cooling off

If the consumer wants to return a product and get a refund, then during the cooling-off period they must notify by letter, fax or email the person who issued the product.

If the cooling-off period has passed, the right to return the product and get a refund is lost. The right to return is also lost if a right or power that the consumer has under the terms of the product is used, for example, a guarantee or warranty.

A1.5 Funeral funds (NSW)⁸

Coverage and scope

The NSW Government, when conducting an inquiry into funeral funds, found that vulnerable consumers had been subjected to high-pressure sales tactics. The cooling-off period for pre-paid funeral contracts was introduced to provide greater protection for these consumers, particularly older people, who may be more susceptible to pressure to buy a pre-paid funeral service.

Section 49J of the *Funeral Funds Act 1979* covers the cooling-off period. It states:

- (1) A person who enters into a pre-paid contract with a funeral service supplier, or the person's legal representative, may, by notice in writing given to the funeral service supplier within the period after entry into the contract prescribed by the regulations, end the agreement.
- (2) If a person or the person's legal representative ends a pre-paid contract under subsection (1):
 - (a) the funeral service supplier must refund to the person the amount the person has paid to it under the agreement, less any amounts prescribed by the regulations, and

⁷ Information for this section comes from Findlaw Australia <http://www.findlaw.com.au>

⁸ Information for this section comes from Parliament of NSW Hansard, <http://www.parliament.nsw.gov.au>, *Funeral Funds Act 1979*, Funeral Funds Regulation 2006, and the NSW Office of Fair Trading.

(b) the person is not (despite anything to the contrary in the contract) liable to the funeral service supplier in any way for ending the agreement.

(3) In this section: *funeral service supplier* means a person who agrees to supply a funeral service under a pre-paid contract.

Further, the regulations state:

(1) For the purposes of section 49J (1) of the Act, the period of 30 days is prescribed as the period after entry into the contract in which a person may end the agreement.

(2) For the purposes of section 49J (2) (a) of the Act, the amount of \$50 is prescribed as the amount that the pre-paid funeral fund is not required to refund to a person who has ended a pre-paid contract within the time specified in subclause (1).

Information must be provided to the consumer by the funeral director before they enter into a pre-paid contract. It should include information on each component to be supplied under the contract and the costs of those components. Information must also be provided to the consumer with the pre-paid contract, including which services are not covered by the contract and other terms and conditions in the contract.

The cooling-off period allows the consumer to change their mind, perhaps after deciding the funeral plan they signed for is too expensive and lavish. It also allows those who may not have completely understood the contract, or who signed while in a vulnerable state, to opt out.

Process for cooling off

As stipulated in the *Funeral Funds Act 1979*, if a person or that person's legal representative wishes to end the contract they must give notice in writing within 30 days of entering into the contract. The Act also allows for dispute resolution.

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