

Fairfax Media Limited

Submission To Senate Standing Committee on the Environment, Communications and the Arts

Do Not Call Register Amendment Bill 2009

Fairfax Media Limited and its related bodies corporate (**'Fairfax'**) welcomes the opportunity to comment on the *Do Not Call Register Amendment Bill 2009* (**'Bill'**), which seeks to amend the *Do Not Call Register Act 2006* (**'Act'**).

Summary

Fairfax has a number of concerns regarding the application and interpretation of the Bill and has included specific examples that highlight the difficulties our businesses will face in implementing the legislation.

Secondly, Fairfax is concerned about the short time frame in which businesses will be required to fully implement and comply with the new legislation.

Finally, Fairfax is concerned about the impact the Bill will have on a significant proportion of our customers, being small businesses, as well as the economic impact the Bill will have on larger businesses, such as Fairfax.

We note that one of the justifications for the Bill is the protection of privacy and in particular, to minimize the intrusions relating to telemarketing activity. Whilst Fairfax supports these objectives in the context of private individuals, it remains very concerned about the impact of the Bill on legitimate business to business interaction, including telemarketing activities.

Background

Fairfax publishes more than 400 newspapers, magazines and websites in metropolitan, rural and regional Australia and New Zealand, including *The Sydney Morning Herald*, *The Sun-Herald*, *The Age*, *The Canberra Times* and *The Australian Financial Review*. The largest revenue source for Fairfax is from advertising. Accordingly, our publications and websites rely heavily on their ability to generate new and repeat advertising, including classified and display advertisements.

Although a large proportion of Fairfax's *classified* advertising is placed by private individuals, a significant proportion is also placed by small and medium sized businesses and some larger businesses. Almost all of Fairfax's *display* advertising is placed by businesses, Government departments and not-for-profit organisations. Display advertising is often placed on behalf of a customer by their appointed advertising agency.

Advertising is not only a vital part of Fairfax's revenue source, but is also an integral part of Australia's economy in general. Almost every business, whether small, medium or large, uses advertising to promote their business and increase sales.

Advertising sales are executed in a wide range of circumstances, including some of the following scenarios:

1. inbound telephone calls to a Fairfax advertising contact centre from a new customer;
2. inbound telephone calls to a Fairfax advertising contact centres from an existing customer, wishing to place new advertisement/s;
3. outbound telephone calls to potential new customers;
4. outbound telephone calls to existing customers to solicit repeat business;
5. new and existing customers place advertisements directly online;
6. advertising agencies generally contact a Fairfax advertising account manager to arrange for the placement of their advertising. Confirmation of the placement may be made over the telephone, internet or email.

The Bill proposes to allow businesses and Government departments to place their phone and fax numbers on the *Do Not Call Register* ('**Register**'). Accordingly, this submission focuses on the placement of business rather than private party advertising.

In relation to scenario 3 above, Fairfax engages a number of sales people or telemarketing agencies who are responsible for new business acquisition through outbound tele-marketing. Fairfax directs this telemarketing activity to businesses and does not generally target private individuals with outbound telemarketing where we are attempting to solicit new business. The businesses which are contacted through scenario 3 above are not randomly selected. These businesses are targeted because they have recently advertised with a competitor or new businesses that have recently launched in a particular location.

The frequency in which a business will place an advertisement depends on the nature of their business activities, their competitors' activities and other economic factors. Some businesses will place an advertisement weekly whereas others will only advertise annually or occasionally.

As well as advertising, many of Fairfax's publications rely on cover price revenue, generated from newsagent and subagent sales and from new and renewed subscriptions to the titles. With the general titles, a subscription is generally taken out by a private individual. However, business sales and subscriptions still comprise a significant component of revenue for some Fairfax businesses, particularly for specialist titles such as *The Australian Financial Review*, niche titles and certain websites.

Fairfax utilises contact centres in most Australian States and Territories and many personnel are engaged in our telemarketing activities. Our personnel are responsible (among other things) for interacting with advertisers and ensuring that their advertisements are placed correctly in the relevant publications. Similarly, our contact centre personnel are responsible for interacting with subscribers, including many business subscribers.

In this context, telephone sales represent a vital part of Fairfax's business. So it is critical that our telemarketing personnel are clear about what calls they are permitted to make and that any ambiguity in the legislation does not lead to inefficient work practices and revenue losses.

Fairfax's Concerns with the Bill and Its Application

Fairfax has a number of specific concerns in relation to the application of the proposed legislation. Although the concerns set out below are raised in the context of business advertising, the same issues will arise in relation to Fairfax's communication with businesses regarding subscriptions.

Who represents the business and has authority to place a business number on the Register?

Fairfax is concerned about the scope of what constitutes a business number. For example, if one employee places a business switch or departmental number on the Register (as opposed to a direct line) will this prohibit Fairfax from contacting anyone at that business? It would seem inappropriate for one employee to express a preference on behalf of other employees without their direct input, especially in a business context where the ability to receive telemarketing calls may be relevant to someone's job and business productivity.

In these circumstances, Fairfax submits that the Bill should be amended so that only direct business and fax phone numbers are eligible for inclusion on the Register.

Further, Fairfax is concerned about the authorization process for placing a business number on the Register. The Act presently states that an application for a number to be included on the Register may be made by the relevant account holder or their nominee. Currently, there are no validation processes in relation to having a number added to the Register – other than a requirement to tick a box that the application has been lodged by the telephone account holder or their nominee.

Fairfax believes that a more thorough authorization process is required in a business context. For example, an employer is not always the account holder for an employee's business contact number. In some instances, the employee is the account holder and seeks reimbursement from their employer for their business calls. Fairfax is concerned about employees placing their business numbers on the Register without the knowledge or consent of their employers. Dealing with business to business telemarketing calls may be a legitimate and important part of an employee's duties and in the best interests of the companies they work for that they accept and deal with those phone calls.

As a minimum, Fairfax believes that before any business number is added to the Register, the applicant should be required to obtain the employer's consent (by having an authorised officer sign the form) or at least acknowledge that the employer has approved the placement of the business number on the Register.

How regularly should business numbers be updated on the Register?

The current provisions of the Act require that telephone numbers be re-registered every three years. Fairfax is concerned that this period may be too long in a business context, given the turnover of employees and the evolving nature of many business' size, scale and strategic drivers.

By way of example, an employee may add their business number to the Register and subsequently leave that business without removing the number from the Register or informing the incoming employee into their role of the fact that the business number they are using has been included on the Register. Employees also change roles, responsibilities and desk/office locations within companies. This too has the potential to create confusion and inconsistency in relation to phone numbers that have been listed on the Register where their use/user has changed.

For these reasons, Fairfax submits that there should be a shorter time period of one year in which business numbers need to be refreshed on the Register. Alternatively, there should be an onus placed on an employee to withdraw their business number from the Register if they no longer use that number for business purposes.

Other business to business telephone interaction

The definition of telemarketing activities in the existing *Do Not Call Register Act* is broad. Whilst it appears that the focus for the amendment legislation is to deal with more traditional telemarketing activities, Fairfax is concerned about the impact of the Bill on other forms of telephone interaction in a business context. For example, Fairfax's CEO, executives and other employees may wish to contact other business representatives about an opportunity in circumstances where an existing relationship may not exist. Should Fairfax be directing each of its employees to check the Register before making any telephone call that may fall within the broad definition of 'telemarketing activity' under the Act? This would be an inefficient process and create an unnecessary administrative burden on our employees.

Inferred Consent

As set out in the Background section above, Fairfax regularly contacts businesses who have placed advertisements in the past to establish whether they wish to re-advertise their products or services again in the future. These are important business leads for Fairfax and very often result in renewed business relationships. It is not clear from the Bill whether this type of telemarketing activity falls within the 'inferred consent' category and whether 'inferred consent' can expire after a period of time.

For example, if an advertiser has not placed an advertisement for some months and the number is listed on the Register, should Fairfax assume that the business relationship has lapsed and not make any further contact? This is certainly not in Fairfax's interests and in many cases will not be in the business' interests either as the telemarketing activity often initiates further advertising from which both parties benefit. Some clear guidance on the requirements for 'inferred consent' is therefore sought.

Breadth of Industry Classifications

The Bill enables businesses to register their consent to receiving telemarketing calls from particular industry groupings. The Australian Communications and Media Authority ('ACMA') will be conferred with powers to determine these industry groupings.

It will be important for Fairfax that ACMA determines the industry groupings on a narrow basis so that businesses are given a proper opportunity to opt in to receiving telemarketing calls where relevant and appropriate. For example, the media sector is closely linked to the telecommunications sector but offer fundamentally different goods and services. It is Fairfax's submission that, as a minimum, the media and telecommunications sectors be treated separately.

It should also be noted that, in addition to its traditional media businesses, Fairfax operates businesses outside the media sector. For example, InvestSmart is a business for investing in managed funds, Stayz is a business that provides holiday accommodation and RSVP is a dating service. We would like to see clarification that the industry groupings will be structured in a way to ensure that someone who may not want to be contacted in relation to media advertising could be contacted in respect of dating services or investment services if they so choose.

Implementation Period

As set out in the Background section to this submission, Fairfax makes a large number of telemarketing calls to businesses and to Government departments. As a consequence of this, Fairfax is concerned about the short time period in which it is proposed that the Bill will become effective and legally binding. The Bill will require Fairfax (and others in the industry) to implement a whole new way of approaching telemarketing activities across the range of business units.

When the Act was first introduced, businesses were given 12 months to prepare for, and implement the new legislation. In that period Fairfax reviewed its business practices, ran education programs for staff and, where relevant, changed its business practices and strategies. That process was resource intensive, costly and very time consuming. A working group was established which met regularly to deal with all the ramifications for the business units. Staff had many queries and concerns which needed further investigation and clarification and sometimes external advice.

Under the Bill, the amending legislation is far more complex and will require extensive re-education of staff, contractors and external consultants on the new laws and how the exemptions operate. We anticipate the implementation process this time around will be more difficult due to the fact that there are additional uncertainties around concepts such as industry sectors and inferred consent where there is no clear guidance. In particular, it could be far more difficult for Fairfax personnel to ascertain whether there is inferred consent for a business to business telephone call as opposed to a private individual.

In addition, Fairfax will need to develop and update its software systems and database capabilities to ensure that business numbers are properly ascertained and captured in

formats that can be washed against the Register and so that express or inferred consent is properly captured. This may require capturing qualitative information about the scope of the consent where consent applies to some business units but not others. These changes will be costly and will require a proper period of time to be developed, implemented and explained to relevant staff.

In the Bill's Second Reading Speech, it is stated that the compliance costs associated with implementing the legislation are expected to be in line with the costs that telemarketers incurred with the introduction of the Act and are not expected to be large. Further, the costs that are referred to in the Second Reading Speech are the specific costs of cross checking a particular number of telephone numbers against the Register. This analysis does not take into account the significant and ongoing education and infrastructure costs mentioned above.

For this reason and the ones set out above, Fairfax believes that businesses should be given at least 12 months, preferably 18 months, to implement the new laws.

Australian Direct Marketing Association (ADMA)

As well as this submission, Fairfax has been working with ADMA on the development of the ADMA submission on the Bill which will be submitted on behalf of the ADMA membership. Fairfax supports the ADMA submission and concurs with the issues and concerns outlined in that submission.

Conclusion

The Bill, if passed, will ultimately reduce the pool of available business opportunities that Fairfax is able to pursue and will add a further layer of regulation and complexity to the way we conduct our business. This will have at least a short term impact on our revenue streams, strategic processes and ability to generate new business. It will also affect productivity and Fairfax's business resourcing.

In order to minimize these impacts, we believe it is essential that the Bill is amended so that:

1. where a company phone network exists, only direct business numbers/extensions are able to be listed on the Register and not switch or departmental numbers;
2. there is a clear authorization process for listing a business number on the Register that requires the consent/verification of the business owner or the account holder entity;
3. the time frame for renewals of non-private telephone numbers is reduced from three years to one;
4. it is clear that business to business activities that do not amount to telemarketing are not restricted when the number involved is listed on the Register;
5. there are guidelines around the concept of 'inferred consent' which specifically relate to business relationships;

6. the industry groupings to be determined by ACMA will be delineated on a narrow rather than a broad basis to facilitate the obtaining of consents to receive calls in specific industry areas; and
7. the implementation period for compliance with the amendments is extended to at least 12 months.

Fairfax Media Limited

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