

InsightCFS

Committee Secretary
Senate Standing Committees on Environment and Communications
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**Submission to the Senate Environment and Communications
Legislation Committee
from InsightCFS**

**Telecommunications Legislation Amendment (Unsolicited
Communications) Bill 2019**

Executive Summary

1. I ask the Committee to reject the proposed changes to the Do Not Call register. I cannot comment on the other Acts proposed to be amended.
2. I have a suggested solution to the problem which the Bill seeks to address with its change to the DNC Register. I have summarised what I am calling a Charity Calling Register below.
3. The general group of people the Senator seeks to protect will, if the Bill is passed become the target of more aggressive and more sophisticated telemarketing.
4. The effect of the Bill over about three years will be to reduce the availability of funds to many small and medium charities. We expect the take up rate of the proposed charity register to approach the take up rate of the general register. The Do Not Call registration service is about 50% of the available phone numbers.
5. The income to charities which we are aware of will be significantly reduced if this bill is passed. In the case of our clients the impact will be (in no particular order) 2%, 5%, 9%, 60% and 30%. I think those numbers speak for themselves.

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1 Introduction

I can only address the proposed change to the Do Not Call Register Act 2006. The other matters are not part of my expertise.

I remain convinced that telephone acquisition is an effective and fair way for charities to raise funds in Australia and for a short time after the proposed Bill is passed that will remain the case.

I have been in charity fundraising for nearly 30 years. My work in fundraising has brought me in contact with many inspiring people and I have had the privilege to help fund the good work they do. Nonetheless telephone acquisition of supporters is getting harder and is now only available to the largest charities who are prepared to invest in that work which has a return on investment over more than 12 months. It is my observation that as the task of raising new funds becomes more difficult as companies engaged in this process become more aggressive and ruthless.

I am just one small operator of about ten in Australia. I raise funds for 5 excellent charity clients.

The part of the Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019 dealing with the Do Not Call Register Act 2006 and telemarketing of charity fundraising may only seem to be a solution to help the most vulnerable, but it is my experience that the opposite is the case. The current register is used firstly by the most able and informed and this leaves the poor and vulnerable with an unfair burden.

It is my belief that the Bill in its current form will leave the most vulnerable in society worse off. Any solution that seeks to protect vulnerable people needs to affect all and not be an opt in. However, to opt in all households into a Do Not Call Register would dramatically affect charities and the good work they do. The Committee should consider alternative methods than can protect ordinary Australians and allow charities to raise funds. I believe the regulation of those making the calls rather than the regulation of the calls themselves is a better cost neutral solution.

2 About Insight

InsightCFS¹ is a business owned and run by me, Simon Quinn. The company has been operating since 2002.

Insight has to be selective about the charities we work with and support. Not all charities have the brand or set of emotive tags that allow supporter acquisition by telephone. There are many fine and worthwhile charities that do work of a specific and detailed nature that is not compatible with a 'three minute pitch'.

In their turn, charities who use telemarketing have to be careful about their supplier decision. Many charities make big demands on service providers like me to get large total proceeds and perfect service. I recently tendered against 9 other businesses for a charity's fundraising work over a four-stage process, at impossible return levels for a 6-month contract.

¹ InsightCFS is a trading name of Insight Holdings Consolidated Pty Ltd (ACN 111 803 475)
www.insightcfs.com.au

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I have over 80 staff and we work for five charities across Australia. Insight's charity clients are:

- A. A large household name charity
- B. A medium sized, well run household name charity serving older people
- C. A small struggling charity promoting vaccination for women and girls
- D. A small research institute trying to prevent early death
- E. A small struggling charity which helps children in a regional NSW city.

The unkindest thing anyone could say about these charities is that they are persistent in their desire to help others and to fund that work. They are well run and work hard and deserve the support of the community. Deserving support is different from being entitled to support. The four smaller charities are dependent on telemarketing.²

It is the case that in each of the charities we work for, I report to professional fundraisers who are sometimes disconnected from the larger function of the charity. Charities are now run by boards drawn from the commercial world where growth is a part of the culture. There is a relentless imperative to increase funds each year. The outcome of increased charity telephone calls is due, at least in part to the commercialisation of the charity sector.

3 About telephone calling

Supporters do not support a charity forever. Supporters either withdraw their support or retire from supporting charities altogether. It is a reality of modern charity operation that charities need funds and funds come from people and those supporters need to be replenished and added to.

Telemarketing is the most efficient method for starting a conversation with a potential new supporter.

The need of contact data and conversation is constant and insatiable. As such there is a whole industry that creates compliant data using sometimes questionable techniques. I refer to 'web competitions' and their like that provide a chance to win a small prize in exchange for the right to use the data which is then on-sold to companies and charities. These web prizes often appeal to the most disadvantaged and vulnerable in society.

Contact data which provides the starting point for a telephone sale is often drawn from these web sources and includes a high proportion of vulnerable Australians. A Do Not Call charity register would not assist these people in any meaningful way.

3.1 Contact Data

Once the new supporter is acquired our clients often want to communicate with that person themselves, either additionally to our fundraising work or exclusively. The charity may own the data collected but they do not 'own' the person and this point is sometimes overlooked. We may contact that person again for another charity, but we do not use our knowledge of a person's support for one charity to 'target' that person for another charity.

The charity may believe that the person can be "theirs" to control and nurture. That is a worthy aim and Senators must understand the importance of maintaining supporters. Insight excludes supporters from any other calling once they have become a supporter of a single charity we work for. We do not know if that is practiced by all providers.

² AUSTRALIAN CHARITIES REPORT 2017 May 2019 <https://www.acnc.gov.au/tools/reports/australian-charities-report-2017>

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To create a “database” of supporters for a charity requires consistent work over an extended period. This work is sometimes an annoyance to some people, particularly at dinner time. For the overwhelming majority of people, the process is informative, painless and forgotten. It becomes painful when a person’s goodwill is used by unscrupulous agencies to target the same person over and over again. This results in a person being called for different charities and a number of calls that is intrusive. It is the number of calls and the cross matching of data that magnifies a painless and rare event into an everyday intrusion. We are totally opposed to cross matching, calling to create lists that are then on-sold and calling from low wage countries where the success is low and the intrusion becomes widespread.

I suggest that the Committee should look at the regulation of the data supply industry and the organisations using that data to make calls, as a way of reducing the number of intrusive calls received by ordinary Australians.

- a) Data should not be allowed to be collected and sold on as commercial business.
- b) Consent should be free and informed. Any consent that is provided in exchange for a prize or opportunity to win a prize should not count as free and informed.
- c) Where real consent is obtained by a charity the charity should be free to communicate with that person until the person withdraws from the relationship.

We believe that the regulation of the charity data industry will largely resolve excessive and intrusive calls by rogue agencies.

3.2 Sales Techniques and Human Contact

In the previous 12 months, Insight has had nearly 1.2m telephone conversations with potential supporters. From that number 2 complained to ACMA and about 5,200 people asked us not to be called again and that request was acted upon. I believe if all the charity agencies applied our high standards the problem of intrusive calling would largely disappear.

What is valuable to every one of our clients is a meaningful, informative relationship based on trust and fair exchange. We do not do cold calling to make money for our clients, rather we seek to carefully find new supporters to create a long-term reliable supporter.

The unintended but very clear consequence of the Bill is that reliable supporters will become uncontactable. This is the unseen and most damaging consequence.

At the heart of the Committee’s deliberations is this question; What level of control does the Senate think is appropriate to exert over anyone’s ability to ask people to help?

All charities and their fundraisers respect every supporter. Where that respect is missing it is then the correct role of Government to regulate the method and form of the ask. A charity does not qualify its assistance to those who opt in or opt out. A volunteer does not have a special list of people that would be denied assistance in natural disaster or tragic event. Neither should there be a list of people who have opted out of being asked to help. To opt out of being asked is as Un-Australian as denying a person help when they need it based on some special list of the worthy and the unworthy.

At the moment nothing is better than telemarketing for reaching people and explaining a case and asking for help. The negative intrusion is a result of unregulated use of the medium and not the medium itself.

It is useful to look at the experience of controlling cold calling in the United Kingdom.

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In the UK there are at least four schemes to control telemarketing. The most significant is the Telephone Preferencing Service³. Registration on that list protects domestic phone users from contact from charities and other telemarketers unless there is consent to contact given by the person who is called. My experience from conducting charity telemarketing in the UK that least 80% of the 50% of the phone services which are already on the Australian DNC will take up the Charity No Call option. It will take about 3 years for that to take effect after Choice, Australian Communications and Media Authority and others properly promote the expanded service.

In the UK the inclusion of charity related calls in the UK's Telephone Preference System scheme has resulted in data companies offering services that circumvent the TPS. These schemes rely heavily on non-telephone based consent on web competitions that allow the company to call a person who is registered on the TPS and then obtain consent to be called. This data is then on-sold to charities circumventing the purpose of the TPS and adding additional cost to charities fundraising budgets. It circumvents the TPS and adds to the number of intrusive calls.

Like in the UK, people who cannot protect themselves using existing methods will remain vulnerable to the attention of cold callers who are outside the mainstream industry. The scammers to which Senators have drawn attention in the Second Reading speeches are only one of the possible sources of those calls. So called "Research calls" and overseas callers will not be affected by the proposed amendment.

I believe my suggested approach to regulation set out below will provide a much better method which would entirely control telemarketing from its source and its passage through the phone system.

3.3 Contacting People

While telemarketing of charity fundraising remains uniquely effective it is becoming much harder because the bulk of the population are already difficult to reach by telephone. The reason for that has three parts:

- Mobile phone ownership is nearly universal in Australia⁴
- There is no reason to have a land line for voice.
- Control over incoming calls is almost total. For example:
 1. Calls are screened automatically by the phone manufacturers, external providers or easy to install applications.
 2. Calls are screened for repetition by phone users and manually blocked.
 3. Calls are not answered or sent to message services.
 4. Calling line numbers can be effectively used to stop repeat calling.

As a Telemarketing business we already have a great deal of difficulty reaching people. It is no longer 2005. Most people already have the protection the Bill seeks to provide.

³ The TPS scheme is created under the UK's Privacy and Electronic Communications Regulations and administered by the Information Commissioners Office ico.org.uk

⁴ <http://www.roymorgan.com/findings/8113-state-of-the-nation-sotn-media-svod-overtakes-home-phones-august-2019-201909020417>

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We believe that people who have not been able to use the tools available may be unwilling or unable to register. This will mean that vulnerable people will suffer the most and be subject to a higher number of intrusive calls if the Bill as proposed is passed into legislation. More significantly, despite registration on the expanded Do Not Call Register many people will still be reached by those working outside the mainstream telemarketing industry.

On the assumption that there may remain after this Bill is implemented a useful number of people who are happy to receive charity calls regardless of whether or not they support, we believe that that group will - because of a passing motivation register and become unavailable to all but the currently consented organisation.

We have experienced that phenomenon in the United Kingdom.

3.4 Existing protections

We operate on the basis that there is a right for one person to ask another for help and assistance. I can call you from afar, I can knock on your door, I can send you an email. It is the same with the phone. You can shoo me away in any situation. The problem is that there are too many calls to reach a relatively static population who are now very hard to reach and as a result the calling becomes intrusive. What we want to see is fewer calls made to the extent that charities can communicate their message with the least intrusive method possible and that those calls and appeals are fairly distributed. The Bill in its current form does neither of those things. It will not reduce the number of calls and it will unfairly disadvantage the most vulnerable.

Choice published an excellent article⁵ on how to stop my clients from reaching potential supporters in which five methods of controlling phone calls are described. I know that each of those methods are imperfect but in combination they do work and can be applied to every other form of unsolicited communication.

- Stop giving people permission to call.
- Using all the rights to information under the Telecommunications (Telemarketing and Research Calls) Industry Standard 2017
- Politely and firmly decline the conversation; saying No really does work.
- Complain to the ACMA which likes to act on complaints.
- Use a call screen service which will identify problem callers (as well as a few good people like our clients' supporters).

I say to the Committee that there are enough tools available to the control the number of calls from those who work fairly within the current system. There remain many people who are not controlled by any of the current tools and who are impervious to the method proposed.

⁵ <https://www.choice.com.au/electronics-and-technology/phones/mobile-phones/articles/nuisance-calls-to-mobiles>

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4 The Bill

Senator Griff's Bill is very well intended and by itself it is completely understandable.

If the Bill were to be recommended by the Committee, I suggest these amendments:

- a. there should in Schedule 2 of the DNC Register Act be a longer express consent period for charities as three months is too short a period for charities. For example, many charities run a Christmas appeal and the last time I looked the period from one Christmas to the next was longer than three months.
- b. access to the DNC register for charity listings should be at no cost,
- c. there should be stronger prohibitions on group or third-party listing, that is it should be prohibited for a Charity to opt in its own supporters to create a 'communication monopoly' and
- d. forever is a long time. Registration to stop charity calling should be for no longer than 9 months.

There is no satisfactory distinction in the Bill between new or cold calling and contact with repeat supporters. Cold call is the source of most complaint calls, but cold calling is the foundation for charity fundraising. Good people do not volunteer their support in sufficient quantities to become supporters of charities. Telephone acquisition is a vital part of the supporter mix.

The importance of continued contact with a supporter is not satisfactorily dealt with the Do Not Call Register Act to deal with charities.

The changes the Bill proposes will over a short period of time lead charities to rely on more intrusive methods of supporter acquisition, reduce services or to close.

5 Alternative Solution to Control Telemarketing – Charity Calling Register

I know that telemarketing and particularly cold calling which the proposed Bill seeks to eliminate, remains the most effective means of bringing together a charity and a supporter.

I know that the total amount of cold calling of all kinds can be effectively controlled using the following measures:

1. Any company which makes a charity calls should be registered and it should be unlawful to conduct a call unless registered, backed up by very large fines.
2. Only Australian companies can register as a charity call provider and all calls must be made by a real person from within Australia.
3. Any Director of a company on the register of approved charity call providers must be a fit and proper person with similar requirements to the Victorian Commercial Raffle Organiser Licence.
4. **Registered companies should report monthly to ACMA on the number of calls made and the outcomes. This step would provide data that would guide future action.**
5. Bogus research (sometimes called Sugging and Frugging) should be specifically banned under the DNC Register Act. With large fines. If the source and script is examined, consents obtained in that way should be invalid and liable to prosecution.

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6. Charities should also report separately on their own internal calling to ensure there is no leakage of contact numbers to unregistered providers.

Over the last 30 years a whole industry had built up around servicing charities' donation requirements. This happens because outsourcing is less expensive and allows charities to concentrate on their core activities. The downside of this is that those charities are disconnected from the consequences of the large number of calls. The legislation should instead of effectively banning small fundraising, regulate the supplier market to ensure that the level of intrusive calls is measured and gradually reduced over time.

Thank you for considering these views.

I would be happy to address the Committee or its members on the telephone or in person.

Thursday, February 20, 2020

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