



Committee Secretary
House of Representatives Standing Committee on Social Policy and Legal Affairs

By email: spla.reps@aph.gov.au

Dear Committee Secretary

Do Not Knock Register Bill 2012 – submission

The House of Representatives Standing Committee on Social Policy and Legal Affairs (the Committee) is conducting an inquiry into the *Do Not Knock Register Bill 2012* (the Bill).¹

The OAIC appreciates the Committee affording it the opportunity to make a submission and apologises for the lateness of this submission.

Office of the Australian Information Commissioner

The Office of the Australian Information Commissioner (the OAIC) was established by the *Australian Information Commissioner Act 2010* (the AIC Act) and commenced operation on 1 November 2010. The OAIC is an independent statutory agency headed by the Australian Information Commissioner. The Information Commissioner is supported by two other statutory officers: the Freedom of Information Commissioner and the Privacy Commissioner. The former Office of the Privacy Commissioner (OPC) was integrated into the OAIC on 1 November 2010.

The OAIC brings together the functions of information policy and independent oversight of privacy protection and freedom of information (FOI) in one agency, to advance the development of consistent workable information policy across all Australian government agencies.

Do Not Knock Register

The OAIC supports the creation of a Do Not Knock Register which will give individuals the option of not receiving marketing calls at their home. The establishment of the Register would be an important mechanism to help address community concerns over the intrusiveness of some marketing approaches.

As the Committee is aware, reforms to the *Privacy Act 1988* (Cth) (Privacy Act) are currently being considered by Parliament following the introduction of the *Privacy Amendment (Enhancing Privacy Protection) Bill 2012* (Privacy Bill). The OAIC notes that the creation of the Register is in keeping with the increased controls around the use of personal information for

¹ Information about the Committee's inquiry is available at http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/bill%20do%20not%20knock/index.htm

direct marketing in the proposed Australian Privacy Principles (APPs) contained in the Privacy Bill. It would also complement the protections already offered by the Do Not Call Register.

Proposed APP 7 relates to direct marketing, and prohibits direct marketing unless certain conditions are met. These conditions depend on the type of information involved and how the entity obtained that information, but relate to issues of consent, an individual's likely expectation, and opt-out mechanisms. In considering the Bill, the OAIC suggests the Committee consider the policy approach underlying APP 7. Broadly speaking, the rationale is to ensure personal information is only used for direct marketing in accordance with an individual's expectations, and that options for opting-out are clear and simple.

APP7 generally gives individuals the ability to opt out of receiving direct marketing material from individual organisations. The Do Not Call Register, and the proposed Do Not Knock Register, will increase individuals' control over the marketing communications they receive by enabling individuals to opt out of receiving telemarketing and marketing calls from all entities bound by the *Do Not Call Register Act* and *Do Not Knock Register Bill*.

The remaining comments in this submission relate to the Privacy Act as it currently stands. However, the OAIC considers that these comments will continue to apply under the amended Privacy Act if the Privacy Bill is passed in its current form.

Current Privacy Act coverage of marketing calls

In the context of arguing that sufficient regulation already exists, a number of submissions to the Committee state that national privacy laws apply to marketing calls. The OAIC would like to clarify the extent to which the Privacy Act generally applies to these activities.

The Privacy Act regulates the handling of personal information, including collection, use and disclosure, the accuracy of personal information, how it is kept secure, and the rights individuals have to access and correct the information entities hold about them. The Privacy Act does not address other aspects of privacy, including territorial privacy and physical or bodily privacy.²

The Privacy Act applies to Australian, ACT and Norfolk Island government agencies and certain private sector organisations, including health service providers and businesses with an annual turnover of more than \$3 million.

Therefore, the application of the Privacy Act to marketing calls is generally limited to the following activities by entities subject to the Privacy Act:

² The OAIC notes that, as part of the privacy law reform process, the Australian Government is considering whether to adopt a recommendation from the Australian Law Reform Commission to introduce a statutory cause of action for serious invasion of privacy. If introduced, such a cause of action would cover these additional aspects of privacy. However, it is perhaps unlikely an unwanted marketing call would meet the 'serious' and 'highly offensive' thresholds being considered for the cause of action. The Issues Paper released by the Government on this matter is available here: <http://www.ag.gov.au/Consultationsreformsandreviews/Pages/ACommonwealthStatutoryCauseofActionforSeriousInvasionofPrivacy.aspx>.

- the collection, use and disclosure of personal information which an entity handles for the purpose of targeting particular houses for marketing calls
- the collection and subsequent handling of personal information collected from home occupiers during a marketing call.

The Privacy Act cannot otherwise be used to regulate or restrict the making of marketing calls, or the particular selling tactics that might be employed during such calls. However, the Privacy Act will apply to the Registrar if it is an Australian Government agency or an organisation with an annual turnover of more than \$3 million.

Privacy and the Do Not Knock Register

Compiling and maintaining the Register

A Do Not Knock Register is likely to include registrations from a significant proportion of Australians, including individuals who choose not to list their address in public directories. The Register is therefore likely to be substantial and hold information that some individuals see as sensitive.

It will therefore be important for the Registrar to handle personal information in the Register in accordance with Privacy Act requirements. If the Registrar is an Australian Government agency (which seems intended from the 'Registrar' definition), the Information Privacy Principles (IPPs) in the Privacy Act will apply.³

The IPPs will govern the Registrar's collection, storage, use and disclosure of personal information, as well as providing access and correction rights to individuals. In addition, the Registrar must comply with the notice requirements in IPP2, by ensuring that individuals are aware of the purpose for which their information is being collected, the law under which the information is authorised to be collected, and any entity to whom the Registrar is likely to disclose the information.

As a matter of good privacy practice, consideration should also be given to notifying individuals about additional matters, including:

- who has access to information on the Register and for what purposes
- who to complain to about unwanted marketing calls
- when re-registration will be required
- the marketing calls which should be prevented by registration.

The Registrar will also need to maintain the security of the Register in accordance with IPP4. The OAIC notes that mandatory data breach notification would create additional protection for personal information in the Register. There is no current mandatory requirement to report data breaches; however, the Australian Government will consider whether such an obligation

³ The National Privacy Principles would apply if the Registrar was a private sector entity with an annual turnover of at least 3 million.

should be created in its foreshadowed second stage response to the Australian Law Reform Commission's Report 108 *For Your Information: Australian Privacy Law and Practice*.

Finally, IPP 8 will require the Registrar to check the accuracy of information in the Register before using the information. There may be benefit in drawing on the experience of maintaining the currency of registrations on the Do Not Call Register as to whether there are particular challenges that should be considered when creating the Do Not Knock Register.

Ease of registration and re-registration

As with the Do Not Call Register, the Bill requires individuals to take steps to add their address to the Register. Given this onus, the OAIC suggests that consideration be given to ensuring a simple registration mechanism so that individuals are not dissuaded from registering.

Clause 13(1) of the Bill provides that addresses will stay on the Register for three years or such longer period as is prescribed by the regulations. The OAIC suggests consideration be given to developing a notification system whereby individuals are notified when their registration is approaching expiry.

Consent

The consent exception may lessen the effectiveness of the Register by leaving open the possibility for organisations to rely on 'bundled consent' to claim that an occupier 'consented' to the marketing call. In such cases, an individual may have 'consented' to receiving marketing calls without being aware they were doing so, or in circumstances where they felt they had little choice but to consent to the call if they were to receive the good or service in question.

The Committee may wish to consider whether there should be clarification by way of mention in the Explanatory Memorandum or by regulation to address this issue.

Education

The addition of a Do Not Knock Register has the potential to add to a complex regulatory environment. To ensure consumers are aware of and understand their rights and options, the OAIC believes a public education campaign is very important. In particular, it will be important to ensure consumers understand how to register, and what the Register will and will not do in terms of preventing unwanted marketing calls. On this point, the OAIC welcomes cl 30(a) which confers a community education function on the Registrar.

I hope this submission assists the Committee with its consideration of the Bill.

Yours sincerely



Timothy Pilgrim
Australian Privacy Commissioner

7 September 2012