

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates, 31 May to 2 June 2005

Question: Bud 9

Topic: ACCC - Telemarketing

Hansard Page: Written

Senator Lundy asked:

1. Has the ACCC received any complaints about telemarketers?
2. Have you seen an increase in the level of that complaint?
3. What specifically are the consumers complaining about in relation to the telemarketers?
4. What advice does the ACCC provide the consumer when they do complain?
5. Have you passed on to Government or any other body that the level of callers complaining about this issue have increased dramatically?
6. Which Commonwealth agency is best placed to regulate telemarketers?

Answer:

- 1 & 2 In the period 1 July 2003 – 30 June 2004 the ACCC received 161 complaints and 22 inquiries in relation to telemarketing. For the period 1 July 2004 – 31 May 2005 the ACCC received 477 complaints and 111 inquiries.
- 3 The main complaints and inquires received by the ACCC about telemarketing are:
- Consumers who dislike the practice of telemarketing and wish to obtain information about how to prevent cold calling;
 - Telecommunication providers attempting to transfer the consumers telephone line to another provider, sometimes without the customer's consent;
 - Consumers paying for a service or product that allegedly does not match the description given by the telemarketer ie. holiday accommodation that was significantly inferior to the description given by the telemarketer;
 - Demands for payment from small business made for advertising in a magazine when no such advertising was ordered or approved;

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- Problems with a product (warranties and refunds) or conditions associated with using the products offered through telemarketing; and
- Consumers contacted and advised that they have won a prize. Allegedly there are terms and conditions associated with obtaining the prize that are not disclosed.

- 4 The practice of calling consumers for the purpose of selling products is not of itself a breach of the Trade Practices Act ("the Act"). However, a representation made by the telemarketer about the product/service being offered for sale may fall within the reach of the Act if it is misleading or deceptive or false.

The ACCC gives enforcement priority to those matters where broad economic and consumer detriment is evident. All matters which are identified as being within the administrative responsibility of the ACCC are recorded. Consumers are advised that the details of their complaint or inquiry will be recorded, and are provided with information based on the details that they provide.

If the trader's behaviour and the complaint falls within ACCC priorities the complaint is escalated to the relevant ACCC regional office and an initial investigation of the matter is undertaken.

The consumer protection provisions in Part V of the *Trade Practices Act* are generally mirrored in State/Territory Fair Trading Acts. If a complaint does not fall within the jurisdiction of the ACCC, or if it is identified as a localised issue, the complaint may be referred to the appropriate State Fair Trading Agency.

In 2003, as part of the Financial Services Reform Act, the Parliamentary Secretary to the Treasurer announced tighter rules regarding the use of telemarketing for the selling of financial services. A ban was placed on selling such products on a number of days which are public holidays. Contacts received by the ACCC in relation to financial services matters are referred to ASIC.

Consumers may also be referred to the Australian Direct Marketing Association (ADMA). ADMA administers a code of conduct for its members as well as a 'do not contact' service. Consumers who wish to be removed from marketer's mailing and phone lists can register on the ADMA website, this service however only applies to businesses that are members of ADMA.

- 5 While the number of complaints/inquires received by the ACCC in relation to telemarketing issues, is greater for the period 1 July 2004 – 30 June 2005 than for the period 1 July 2003 – 31 May 2004 it only represents 1.32% of all complaints/inquiries recorded.

The ACCC monitors complaint/inquiry activity closely and where necessary

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takes appropriate compliance action. The ACCC has not raised this issue with government, but will continue to monitor contact on this issue.

- 6 The ACCC is the national agency that deals with general consumer protection issues. The Act already regulates telemarketers, as it does other traders, to the extent that misleading or deceptive representations made about products or services (other than financial services) being offered will contravene the Act.

The issue of whether one Commonwealth regulator is better placed than another to regulate telemarketing practices, is a matter of government policy and thus does not fall within the ambit of the ACCC.