

## Coalition Senators' Additional Comments

Coalition Senators participating in the inquiry have serious concerns about the impact of the Do Not Call Legislation Amendment Bill 2009 on businesses, particularly on compliance costs and legitimate business-to-business activities.

The Department of Broadband, Communications and the Digital Economy could not provide critical data by which to assess any demand for extending the Register, and the impact of the extension on business.<sup>1</sup>

Coalition Senators question the Government's claim that the Bill will 'benefit those organisations that currently experience losses in productivity'<sup>2</sup> through unsolicited marketing calls or faxes.

Coalition Senators note that submissions to this inquiry from businesses and industry associations oppose the bill on the basis that the:

Extension of the do not call to business and government will strike at the very heart of commerce and put significant limitations on it.<sup>3</sup>

### ***Stakeholder consultation – who wants the Bill and why?***

Coalition Senators were further troubled by the apparent lack of current and representative consultation conducted by the Department:

The Department has based its answers on research and consultation with Australian consumers and industry stakeholders. This included the 2008 public discussion paper *Eligibility Requirements for Registration on the Do Not Call Register* from which approximately 85% of the 186 respondents supported the extension of the Register to all telephone and fax numbers.<sup>4</sup>

Coalition Senators do not consider that submissions, now two years old, constitute either current or adequate consultation about the Bill.

The Australian Association of National Advertisers noted:

For example, as to the earlier consultation responses—I note the minister's second reading speech I think stated that 86 per cent or 76 per cent of submissions were in

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<sup>1</sup> Department of Broadband, Communications and the Digital Economy, *Response to Question on Notice*, Question No 1-4

<sup>2</sup> Hon Anthony Albanese MP, Minister for Infrastructure, Transport, Regional Development and Local Government, *House of Representatives, Second Reading Speech Hansard*, 26 November 2009

<sup>3</sup> Mr Rob Edwards, Chief Executive Officer, Australian Direct Marketing Association, *Committee Hansard*, 5 February 2010, p. 16.

<sup>4</sup> Department of Broadband, Communications and the Digital Economy, *Response to Question on Notice*, Question No 4

support of the proposal. When that is broken down, most of those were either individuals or individual small businesses—120 or so.<sup>5</sup>

Evidence given by the ACMA Chair, Mr Chris Chapman, during Additional Estimates hearings of the Senate Standing Legislation Committee on Environment, Communications and the Arts verified concerns of Coalition Senators that the Minister had not adequately consulted about the Bill:

**Senator FISHER**—Who wants the proposed Do Not Call Register, and what percentage of businesses—not numbers—do you expect would register to not be called?

**Mr Chapman**—We simply do not have a view about that.<sup>6</sup>

When pressed by Coalition Senators, the Minister was unable to deliver any evidence as to who wants the Bill, and why:

**Senator FISHER**—This bill applies to all business, not just small business. Big business, the likes of Fairfax, told the inquiry last week that they did not like it a lot.

**Senator Conroy**—It has been a particular concern of mine that unwanted and unsolicited calls and faxes are wasting valuable business resources and could potentially affect the operation of emergency service organisations.

**Senator FISHER**—That is a view of yours. Do you have evidence from business?

**Senator Conroy**—Businesses that choose to register their number clearly want protection against telemarketing calls. If they do not, then they do not have to.<sup>7</sup>

Coalition Senators are troubled that the motivation behind imposing the Bill on Australian business seems to rest on the basis of 'a particular concern' of the Minister.

Indeed, the Committee heard evidence that a business operator could be derelict in their duty were they to place their business on the Do Not Call Register.

**Senator TROETH**—As you say, business should be open for business. I would have thought that this—as you have correctly remarked—went against the Privacy Act by default.

**Mr Edwards**—Looking at my job, if I put ADMA's number on the Do Not Call Register—which would be a little bit funny—and organisations were trying to sell my organisation products and services that could improve the productivity I could actually be held in dereliction of duty of my job. The fact is that I am open for business so I expect to receive calls. If I do not want to talk to them I will not talk to them.

### ***Impact on business – net negative***

The Government intends that the Bill benefit businesses currently experiencing losses in productivity or incurring additional expenses through unsolicited telemarketing calls and marketing faxes. The Department stated:

<sup>5</sup> Ms Trixi Madon, Manager, Codes and Self-Regulation, Australian Association of National Advertisers, *Committee Hansard*, 5 February 2010, p. 31.

<sup>6</sup> Mr Chris Chapman, Chair, Australian Communications and Media Authority, *Committee Hansard*, 8 February 2010, p. 57

<sup>7</sup> Senator Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, *Committee Hansard*, 8 February 2010, pp. 57-58

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...businesses, particularly small businesses, have stated they have experienced losses in productivity caused by responding to unsolicited telemarketing calls and marketing faxes.<sup>8</sup>

However, Coalition Senators do not believe that the changes to the Do Not Call Register proposed in the bill would provide a net benefit to business. In fact, witnesses suggest the Bill is more likely to lead to productivity and job losses as a result of increased costs, diminished revenues and additional compliance requirements.<sup>9</sup>

As the Australian Association of National Advertisers explained:

Our concerns are the implications across the board that have not been quantified as a benefit overall for the economy.<sup>10</sup>

***Impact on business – increased costs and red tape***

Evidence to the Inquiry noted concern at the ability of business to meet additional costs imposed by the extended reach of the Register.

Fairfax Media Ltd noted:

We are very concerned about the costs... We are fortunate enough to have a very sophisticated database, probably more sophisticated than those of most companies in Australia. I do not know how it would be handled within a business on infrastructure that was not as automated as ours, not as connected as ours and not as well developed as ours.

That would be a bigger cost to many businesses that are unfortunately not in a position to be able to use automated databases in the way that we can. There is an undeniable cost.<sup>11</sup>

The Australian Information Industry Association (AIIA) indicated that an individual business would experience a 25 per cent increase in their marketing costs to implement systems to comply with the bill.<sup>12</sup>

An Access Economics report commissioned by the Australian Direct Marketing Association (ADMA) and provided to the committee calculated that the total

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<sup>8</sup> Department of Broadband, Communications and the Digital Economy, *Submission 23*, pp 3–4.

<sup>9</sup> Mr Robert Whitehead, Director, Marketing and Newspaper Sales and Director, Fairfax Enterprises, Fairfax Media Ltd, *Committee Hansard*, 5 February 2010, pp 36-40.

<sup>10</sup> Ms Trixi Madon, Manager, Codes and Self-Regulation, Australian Association of National Advertisers, *Committee Hansard*, 5 February 2010, p. 26.

<sup>11</sup> Mr Robert Whitehead, Director, Marketing and Newspaper Sales and Director, Fairfax Enterprises, Fairfax Media Ltd, *Committee Hansard*, 5 February 2010, pp 37.

<sup>12</sup> Mr Phil Sloper, Chair (ACT Branch), Australian Information Industry Association, *Committee Hansard*, 5 February 2010, p. 6.

compliance cost incurred by business in the first year following introduction of the bill would be \$23.7 million, with an ongoing cost of \$46–82 million per annum.<sup>13</sup>

Comparison of these costs with the benefits of \$34–47 million per annum as a result of productivity gains due to reduced unsolicited telemarketing calls demonstrates that the costs to business associated with the bill greatly outweigh the potential benefits.

The Department estimated that:

There will be some compliance costs for businesses undertaking telemarketing or fax marketing. These costs are expected to be in line with the costs associated with the current form of the Register, which are estimated at an average \$3000 per year based on a lower level subscription, staff training costs and record keeping flowing from compliance with the legislation.

Marketers may need to set up internal systems to ensure that they are complying with the legislation. The complexity of these systems will depend on the number of telemarketing calls made by the business. It is likely that larger businesses already have systems in place to manage their telemarketing calls, including record keeping.<sup>14</sup>

The Government's figures grossly underestimate the financial impact of the bill on businesses.

This is in part because Government figures are based on the existing "Do Not Call" regime, which imposes obligations to businesses which place calls to private numbers, and assumes those trends can be transferred to this Bill, which potentially imposes obligations on all businesses for 'every day' business calls.

This is particularly evident when unquantifiable costs associated with a reduction in competition, information and innovation; unemployment due to reduced telemarketing business, and

[l]oss of revenues via flow-on effects to end-users of products sold through telemarketing<sup>15</sup>

are also taken into consideration.

The Australian Association of National Advertisers referred to the possibility of the majority of business bearing the cost of additional red tape and compliance requirements, for the benefit of the relative few:

If you have only, say, a thousand or a couple of thousand businesses wanting to put their name on the register, but two million businesses have to have compliance systems in place to ensure that they do not inadvertently capture one of the 1,000 businesses, I am not sure there would be very many people in business or even among the Australian public who would think that to be a very good balance.<sup>16</sup>

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<sup>13</sup> ADMA, *Submission 20*, Attachment 1, p. 9.

<sup>14</sup> Department of Broadband, Communications and the Digital Economy, *Submission 23*, pp 6–7.

<sup>15</sup> ADMA, *Submission 20*, Attachment 1, p. ii & Singtel Optus Ltd, *Submission 5*, p. 2.

<sup>16</sup> Ms Trixi Madon, Manager, Codes and Self-Regulation, Australian Association of National Advertisers, *Committee Hansard*, 5 February 2010, p. 31.

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Coalition Senators believe the Bill, if enacted, would significantly increase red tape and everyday costs of doing business.

Coalition Senators are unconvinced by evidence to the Inquiry that any potential benefits of the bill, in terms of neutralising productivity losses, would outweigh the new cost imposts and productivity losses experienced by business.

### ***Impact on business – uncertainty about "telemarketing"***

The Bill fails to clarify the difference between "day-to-day" business and telemarketing, potentially applying to "routine" business. The Department was unable to satisfy Coalition Senators to the contrary.

This uncertainty, of itself, comes at a cost to business.

The Australian Association of National Advertisers explained many businesses would be unaware of the ramifications of the extension:

...many businesses across the board do not understand that the bill will apply to them and that telemarketing is what a lot of businesses currently consider just normal business calls. That goes to not just small businesses, but the micro and home based businesses as well, who are very unlikely to have any idea.<sup>17</sup>

Fairfax Media Ltd succinctly explained the issue in evidence to the Committee:

...‘telemarketing’ is a word that means different things to different people...<sup>18</sup>

Mr Whitehead continued:

What it means in a business context is that most people who accept business calls from other businesses do not regard them as telemarketing calls. When a divisional chief rings someone else who is not currently a business partner and wants to sound them out about a completely new opportunity that may arise for both companies, neither of those people would ever imagine they would be called telemarketing calls.<sup>19</sup>

ADMA also agreed that many businesses are unaware that the Bill would apply to them, let alone the impact it would have:

You might note from our submission that we found that there is actually a very low awareness within the business community that the Do Not Call Register legislation would actually even apply to them. There seems to be a

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<sup>17</sup> Ms Trixi Madon, Manager, Codes and Self-Regulation, Australian Association of National Advertisers, *Committee Hansard*, 5 February 2010, p. 26.

<sup>18</sup> Mr Robert Whitehead, Director, Marketing and Newspaper Sales and Director, Fairfax Enterprises, Fairfax Media Ltd, *Committee Hansard*, 5 February 2010, p. 38.

<sup>19</sup> Mr Robert Whitehead, Director, Marketing and Newspaper Sales and Director, Fairfax Enterprises, Fairfax Media Ltd, *Committee Hansard*, 5 February 2010, pp 38.

view that the telemarketing call is something which you get from a call centre and that is it...<sup>20</sup>

In practical terms, the Bill would extend the Do Not Call Register beyond companies which regard themselves as in the business of telemarketing, to potentially every business in Australia.

Businesses contact each other for a multitude of reasons, in the course of day-to-day operations. Coalition Senators are concerned that the Bill will impose upon an unquantified number of Australian businesses an obligation to "wash" phone numbers of those with whom they conduct routine business.

Coalition Senators believe that the Bill would "over-reach", hindering the ability of businesses to conduct "routine" business, and to establish and maintain commercial relationships.

### ***Lack of empirical analysis***

Coalition Senators are concerned at the lack of evidence quantifying the net beneficiaries derived by extending coverage of the Register.

The Australian Association of National Advertisers agreed:

There will be a cost to businesses and to the economy. Is that really outweighed by the benefits that are received by those companies? I do not think there has been any quantification, even in a few of the scenarios presented, of what those figures might be overall.<sup>21</sup>

In particular, Coalition Senators are concerned at the lack of quantitative data about the anticipated take up rate of the "extended" Register:

#### **Question No: 1**

##### **Senator Fisher:**

How many businesses will register one or more numbers on the 'do not call' register, and what percentage of Australian businesses is that/are they?

##### **Answer:**

It is difficult to estimate how many businesses in Australia will choose to put one or more of their numbers on the Do Not Call Register, however, submissions to the Department and consultations undertaken with industry associations and small

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<sup>20</sup> Ms Melina Rohan, Director, Corporate and Regulatory Affairs, Australian Direct Marketing Association, *Committee Hansard*, 5 February 2010, p. 16.

<sup>21</sup> Ms Trixi Madon, Manager, Codes and Self-Regulation, Australian Association of National Advertisers, *Committee Hansard*, 5 February 2010, p. 31.

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business groups, together with the experience of business registrations in the UK indicate that the numbers could be substantial...<sup>22</sup>

And the Department was unable to clarify how many businesses would face the additional compliance obligations of 'washing' call lists against the Register:

**Question No: 2**

**Senator Fisher:**

How many businesses will need to access the register to have numbers 'washed', in order to ensure they do not breach the new provisions, and what percentage of Australian businesses is that/are they?

**Answer:**

All businesses making unsolicited telemarketing calls or sending unsolicited marketing faxes to Australian telephone or fax numbers will be required to comply with the legislation...

As at 30 June 2009 there were 2 948 telemarketers registered to use the service provided by the register operator to wash their numbers against the numbers on the Do Not Call Register. As there may be businesses that make telemarketing calls or send marketing faxes to businesses only and that therefore are not already registered to use the washing service, it is likely that this number will increase.<sup>23</sup>

Nor was the Department able to quantify how often a business would face new obligations under the Bill.

**Question No: 3**

**Senator Fisher:**

(In respect of 2 above) how often, and over what period of time?

**Answer:**

A 'washed' list remains valid for 30 days. Any organisation that wishes to make telemarketing calls or send marketing faxes on a regular basis will need to wash their list of numbers against the Register at least every 30 days. However this may vary amongst organisations, as some may undertake telemarketing or fax marketing activities less than once every 30 days. This will affect how often they would need to 'wash' the numbers against the Register.<sup>24</sup>

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<sup>22</sup> Department of Broadband, Communications and the Digital Economy, *Response to Question on Notice*, Question No 1

<sup>23</sup> Department of Broadband, Communications and the Digital Economy, *Response to Question on Notice*, Question No 2

<sup>24</sup> Department of Broadband, Communications and the Digital Economy, *Response to Question on Notice*, Question No 3

Coalition Senators are concerned by the lack of evidence substantiating:

- a. How many businesses will seek to benefit from the Bill (by registering "do not call" numbers), and,
- b. How many businesses will carry new obligations from the Bill (by having to "wash" numbers against the register), and how often.

Coalition Senators remain to be convinced that the Bill will do anything other than burden most businesses, yet benefit very few (if any) businesses.

### ***Concluding Remarks***

Coalition Senators remain concerned at uncertainty about the scope and impact of the Bill and corresponding ramifications for business, especially the probably majority of businesses which have not previously interacted with the current Do Not Call Register.

Any difference between day-to-day business calls and "telemarketing" remains unclear. Further, the Department and the Minister have been unable to quantify the businesses which will benefit from, or the businesses to be burdened by, the extended reach of the Register.

Without appropriate data to assess any alleged demand for the extension, Coalition Senators are not convinced the Bill will deliver the stated objective of benefiting those organisations currently experiencing losses in productivity or incurring additional expenses as a result of unsolicited marketing calls or faxes.

### **Recommendation 1**

**1.2 At this stage, for the reasons outlined above, Coalition Senators are yet to be convinced that the Bill should proceed.**

**Senator Mary Jo Fisher  
Deputy Chair**

**Senator the Hon. Judith Troeth**