

ENVIRONMENTAL, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS  
LEGISLATION COMMITTEE

SUBMISSION BY SALESFORCE AUSTRALIA PTY LTD IN RELATION TO THE DO NOT CALL  
REGISTER BILL 2006

June 2006

1. EXECUTIVE SUMMARY

1.1 Salesforce supports the overall principle of a national Do Not Call Register with national standards to regulate telemarketing practices.

1.2 Salesforce supports ADMA's submission on the Do Not Call Register.

1.3 The following provides a summary of our concerns in relation to the Bill:

- (a) The Bill has the unintended consequence of stopping companies from talking to their existing customers on the phone. The uncertainty regarding the scope of an 'existing business relationship' needs to be resolved.
- (b) Individuals should have the ability to consent to receive telemarketing calls for an unspecified duration and to withdraw that consent at their discretion. The three month expiry imposed on express consent for unspecified periods is unnecessarily restrictive.
- (c) We understand the overall purpose of the Register is to provide individuals with the right to decide whether they want to receive telemarketing calls. Allowing account holders to register a household number removes this choice.
- (d) The Bill creates considerable uncertainty in relation to 'nominees'. For example, how will telemarketers know whether an individual is a nominee or not and how will ACMA verify nominees? This uncertainty needs to be rectified.

2. SALESFORCE AUSTRALIA

2.1 Salesforce Australia Pty Ltd is one of the largest outsourced call centre operators in Australia providing customer development services for many leading Australian businesses. Salesforce holds around 50 million conversations each year and makes some 2 million sales. It is owned by Salmat Limited, an Australian listed company.

2.2 Salesforce has call centres located in Melbourne, Sydney, Wagga, Bundaberg and Geelong and employs over 3,000 staff to engage in conversations with individuals on a daily basis.

2.3 Salesforce is currently rated as the Best Employer in Australia and New Zealand by Hewitt Associates.

### 3. EXPRESS CONSENT

- 3.1 Under the Bill an individual or organisation can conduct a telemarketing call to an individual with their “express consent”. Schedule 2, Clause 3, paragraph (3) provides that for the purposes of ‘express consent’ where the duration of the consent is not specified, consent is deemed to be withdrawn after 3 months.
- 3.2 We believe the time limit on express consent will only result in increased inconvenience to individuals if companies are required to obtain the renewed consent of customers every three months. An alternative, more practical option would be to provide that where there is no time period associated with express consent, express consent lapses once it has been withdrawn by the individual when that individual no longer wants to receive telemarketing calls. We understand this is the approach used in the United States of America and the United Kingdom where no restriction is placed on the duration of express consent.
- 3.3 There are no similar time constraints or restrictions for consent under the *Spam Act 2003 (Cth)* or the *Privacy Act 1988 (Cth)*, which also aim to protect consumers and their right to privacy.

### 4. INFERRED CONSENT – EXISTING BUSINESS RELATIONSHIPS

- 4.1 The Register, Salesforce understands, is designed to stop unexpected or unwanted calls. It was not intended to stop companies talking with their customers. We believe an unintended consequence of the Bill is that the legitimate business practice of calling customers to increase customer service and satisfaction will be attacked.
- 4.2 Schedule 2, Clause 2, Paragraph 2(b) of the Bill provides that consent may be inferred from the conduct and the business and other relationships of the individual or organisation concerned.
- 4.3 We support the principle on page 96 of the Explanatory Memorandum to the Bill that ‘A person will be taken to have consented to receiving the types of telemarketing calls that a reasonable person would expect to receive based on the nature of the consent given’. However we are concerned that the commentary on page 97 of the Explanatory Memorandum suggests that if an organisation or individual currently provides goods or services to an individual it is implied that they only have consent to contact that individual in relation to the same product or service.
- 4.4 This implies that if an organisation wants to contact their customers in relation to another product or service they offer that is not the same as the one the individual currently purchased or subscribes to, then this is not permitted. We regard this as a significant interference with normal commerce. It makes it illegal for organisations to talk to their customers (with whom they have an existing relationship) about their product range. This suggests, for example, that the following conduct could no longer occur:

- (a) a bank could no longer contact a customer who has a credit card to offer them credit card insurance;
- (b) a telecommunications provider could not contact a customer who has a landline subscription to offer them another product, such as a mobile telephone or broadband internet;
- (c) a health insurer could no longer call a customer whose subscription recently expired to see if they want to renew their subscription, notwithstanding that such calls would benefit the consumer who may not realise their cover has expired and benefit the Commonwealth and its strategy to encourage individuals to take out private health insurance.

4.5 We would submit that customers would have an expectation to receive these calls as part of good customer service.

4.6 Page 4 of the Explanatory Memorandum to the Bill states that the proposed Register takes the best features of international schemes already operating in other countries but is based primarily on the United States of America model. We do not believe that is what the Bill currently says in some areas, including the area of consent and more specifically, the exclusion for ‘existing business relationships’. The American model clearly provides for the concept of an existing business relationship which is much broader than the interpretation given to the Australian equivalent.

4.7 Under the American Do Not Call Register, an established business relationship exists if you have made an inquiry, application, purchase, or transaction regarding products or services offered by the person or entity involved. Generally, you may put an end to that relationship by telling the person or entity not to place any more solicitation calls to your home. Additionally, the established business relationship is only in effect for 18 months after your last business transaction or 3 months after your last inquiry or application. We consider the uncertainty in the Bill surrounding what constitutes an ‘existing business relationship’ needs to be clarified before the Bill is passed, particularly in light of the substantial penalties for breaching the Act.

4.8 Salesforce supports the definition of ‘existing business relationship’ used in America which addresses the concerns raised in the examples set out above.

4.9 Alternatively, Salesforce supports ADMA’s proposed definition of ‘business relationship’ as being *where an individual:*

- (a) *Has purchased goods and services from an organisation; or*
- (b) *Has received a statement, bill or invoice from an organisation that has supplied goods or services; or*
- (c) *Is a shareholder or financial member of the organisation or body corporate; or*

(d) *Has made a charitable donation to the organisation;*

*in the period of 18 months prior to the unsolicited telephone approach; or*

(e) *an individual that has made inquiries to the organisation within the last 6 months prior to the unsolicited telephone contact.*

4.10 We believe there needs to be a genuine balance between preserving legitimate commercial activities and protecting the consumer's right to opt out of receiving unwanted telemarketing calls. It is crucial to the conduct of business for companies to be able to contact existing and lapsed customers.

4.11 Providing individuals with a legislative right to advise an organisation that they no longer wish to be contacted (as opposed to being placed on the Register) will go some way to achieving such a balance as per the United States model of enabling individuals to ask companies specifically not to call again.

4.12 We submit that reputable Australian call centre organisations already have such a list in place today. Prescribing such a requirement in the new legislation will ensure these practices will extend to unscrupulous organisations.

4.13 It is also important to note that unnecessarily restricting people with existing business relationships from conversing on the phone will not prevent the forms of harassing calls which are so commonly complained about. A person may still receive calls from political organisations, charities, market researchers and more importantly overseas telemarketers.

## 5. REGISTRATION AND NOMINEES

5.1 Clause 15 of the Bill states that registration on the Register can be made by an account holder or a nominee of the account holder.

5.2 The registration of a nominee adds considerable confusion to the Bill.

5.3 It is our view that the Register should comprise of names and numbers. The provisions in the Bill on nominees seem to support this view. For example, without being provided with a name, how else will a telemarketer know who is a 'nominee' for the purposes of the Register? Furthermore, how will ACMA know who a nominee is and whether that nominee has consented to being placed on the Register?

5.4 Restricting registration to account holders inadvertently removes the right of another user of that number from receiving telemarketing calls (even in cases where express consent is provided). For example, where there are several people in one household, an individual who is not the nominated 'account holder' or 'nominee' will be unable to consent to receiving calls from an organisation. We understand the overall purpose of the Register is to provide individuals with the right to decide

whether they want to receive telemarketing calls. Allowing account holders to register a household number removes this choice.

## 6. CONCLUSION

- 6.1 We reiterate our support for the introduction of a national Do Not Call Register for the purposes of eliminating unscrupulous operators. However, this should not be at the cost of restricting businesses from engaging in legitimate business practices, such as having conversations with their customers (including in relation to other products or services).
- 6.2 The imposition of a restrictive interpretation on the existing business relationship exemption would impact seriously on jobs in the call centre industry not to mention other organisations at large. If the Bill remains as it is currently worded approximately 550 Salesforce call centre employees will lose their jobs. The yearly wages total some \$31,700,000. These people are currently employed in outbound customer service roles which involve contacting previous or existing customers in relation to renewing their contract or offering them different products or services. Based on the comments in the Explanatory Memorandum we understand these practices will not be permitted under the new Act. We are concerned that the Bill has unintentionally attacked calls which are not in the category of unwanted or harassing.
- 6.3 We believe many of our clients will also be impacted even though they are not part of the telemarketing industry. It is important to recognise that having conversations with customers is an important and legitimate business practice. Many businesses use telemarketing as a common marketing and customer service tool. Salesforce submits that restricting the ability of companies to speak to existing or lapsed customers is not the way to tackle the problem of harassing and unscrupulous telemarketers.

-End of submission -