

JOINT SUBMISSION on DO NOT CALL REGISTER BILL 2006

SUBMITTED BY: **GE Capital Finance Australasia and
GE Commercial Corporation (Australia) Pty Ltd
(collectively “GE”)**

GE welcomes the opportunity to comment on the Do Not Call Register Bill 2006. References to section numbers, schedules and items are to section numbers, schedule numbers and items in the first reading draft of the Bill, unless expressly stated to the contrary.

1. Related Bodies Corporate

GE’s overall business is organized internally into separate businesses, with each business having its own separate legal entity. From the customer’s perspective, however, there is one business with which they interact. For instance there are 6 businesses that trade as GE Money and 12 that trade as GE Commercial Finance.

WE PROPOSE that the concept of “consent” needs to be more widely defined to extend to all Related Bodies Corporate of a company, particularly if those entities are engaged in the same or essentially the same business. If this is not the case, consent regimes would be difficult for our customers to understand, extremely difficult to administer and could have an anti-competitive effect on companies organized in this way, compared to single entity businesses.

2. Exclusion of Businesses from Original Model

GE supports the exclusion of small business from the Bill, but suggests that the amendments have not gone far enough to allow for easy implementation and accurate operation of the Register. Sole traders, single director companies and other small businesses may have only one number for both private and business purposes. The inclusion of numbers used “primarily” for private or domestic purposes in section 14 (b) means that calls to businesses operating from private numbers on the Register may in fact be legitimate or prohibited, depending on who answers the telephone.

Furthermore, it would be impossible for a telemarketer to know whether a number is used primarily for personal use, meaning that business related telemarketing would need to be run against the register in all circumstances. We believe that this is clearly an unintended consequence of the current drafting.

Unless the carve out is clarified, the intention of the amendments will, in many cases, be lost. There are other instances in the Bill where the language still reflects business registration, for instance, the definition of *relevant telephone account account-holder* in section 4 still refers to organizations. This needs to be amended to reflect the intent of the Bill.

WE PROPOSE that only numbers used solely for private purposes be eligible for registration, and that the language be amended before the second reading of the Bill to ensure it reflects the intent of the Bill.

3. Definition of Consent / Existing Customer Exemption

Given that the burden of proving implied consent lies with the telemarketer, the definition of express consent is of vital importance to provide certainty and efficacy. The Bill (Schedule 2, Item 3(b)) provides that express consent will lapse after 3 months, unless expressed to be for a specified or an indefinite period. This is a very short period of time, considering that GE's relationships with customers may be 30 years long, in the case of mortgage based lending. We believe that the legislation will have unintended consequences if not combined with a further "existing customer" exemption, particularly in the case of credit providers.

For instance, GE would be unable to contact a borrower in difficulties to offer refinancing or extended payment periods (or would bear the risk and burden of proof of deemed consent in respect of such contact). Such contact would arguably be an unsolicited telemarketing call, as the solution to the borrower's problem may result in an increase in the amount of credit over time and a new credit product.

GE considers that under the principles of responsible lending it is in the borrower's and GE's best interests for GE to be able to take the initiative in offering hardship relief or refinancing opportunities. Commonwealth legislation could conflict with and override the letter and spirit of the State-based Consumer Credit Codes on this issue. We would also be prohibited from legitimate post sale calling, including market research and offers that would be of genuine benefit in conjunction with the product already purchased.

WE PROPOSE that specific, written consent to receive marketing and research calls, such as is typically contained in privacy consents signed by GE's customers, should override the more general listing in the Register for the duration of the customer's business relationship with GE and for 3 months afterwards. This could be made subject to the requirement for the company to run its own internal Do Not Solicit register, which would prevent unwanted commercial solicitation without creating a statutory offence for genuine customer care type calls during the life of the business relationship.

Furthermore, **WE PROPOSE** that customers should be able to elect to limit the duration of their consent, rather than have it automatically lapse after 3 months.

4. Integrity of the Register

Maintaining the integrity of a number-based register poses significant difficulties. Some perceived difficulties are:

- the fact that telephone land lines connect to households, not individuals. Registration by one householder blocks access to all householders, some of whom may be genuinely interested in receiving such offers.
- relocations and re-listings will produce churn in the data that does not appear to be addressed in the draft legislation. Numbers registered by previous owners or occupiers could remain on the register, clogging the register and making it difficult to rely on;
- details of precisely how the Register will operate have been postponed to Regulations not yet drafted;
- 3 years is a long period, which would increase administration of the Register if it is to remain accurate;
- the way that the nominee provisions are intended to work is unclear, particularly if the burden of proof is on the company.

WE PROPOSE consideration of name and number registration, and some form of electronic verification of application. We also **PROPOSE** ongoing consultation with business in the formulation of the Regulations and guidelines for the Register.

5. 30 Day Regime

Our experience is that typically telemarketing campaigns work on 90 day cycles. Thirty day cycles will increase the cost of business substantially. We also have concerns that particularly during peak periods, such as pre-Christmas, delays and queues for the washing of data may result in waste or inefficient use of resources. It may also discriminate against businesses whose data is not processed in a timely fashion.

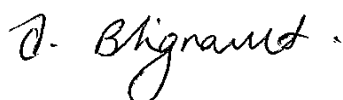
WE PROPOSE an exemption under section 11 (3) (b) longer than 30 days, to allow ACMA to spread work over peak periods and to facilitate planning and preparation by business.

6. Express Exclusions

For the avoidance of doubt, **WE PROPOSE** that the Bill should contain express exclusion for certain activities, such as collections, tracing activities, fraud prevention, post-sale calling, asset verification and underwriting referral calls.

Should you wish to discuss the contents of this submission, please feel free to contact Jane Elliston on (03) 9921 6081, or jane.elliston@ge.com.

Yours sincerely



Ardele Blignault
Vice President, Government Relations, Australia and New Zealand