

13 June 2006

The Secretary
Senate Environment, Communications,
Information Technology and the Arts Legislation Committee
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Parliament House
Canberra ACT 2600

Public Policy and Communications

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Dear Sir/Madam

Inquiry into the provisions of the Do Not Call Register Bill 2006 and the Do Not Call Register (Consequential Amendments) Bill 2006

Telstra welcomes the opportunity to comment on the creation of an Australian Do Not Call Register (**Register**), as outlined in the Do Not Call Register Bill 2006 (**Bill**) and the Do Not Call Register (Consequential Amendments) Bill 2006.

Telstra strongly supports the view that consumers have the right to privacy and should not be disturbed by unsolicited telemarketing calls. Telstra believes this is a serious issue and has historically firmly supported and complied with a broad range of consumer privacy initiatives which have sought to minimise this type of activity. As such, Telstra supports the creation of a Register, which gives consumers the ability to simply and effectively prohibit unwelcome telemarketing calls.

In this submission, Telstra sets out a few areas which we believe require further consideration or amendment to ensure the aims of the Bill are achieved.

A. General Concerns.

Telstra believes that there are a number of sections of the Bill which will have the consequence of significantly reducing the performance of the Register, and will unfavourably impact consumers, industry participants, industry regulators and the Government.

In particular, Telstra believes that, if these sections remain in their current format in any proposed legislation, they will:

- create significant operational uncertainty for all Register participants;
- add administrative burdens to an already extensive regime;
- add additional costs to the operation of the Register;
- result in a significant amount of unnecessary complaints; and,
- result in difficulties with the enforcement process.

We have set out these sections below.

B. Specific Concerns

1. Schedule 2 Consent

Clause 11 of the Bill states that an unsolicited telemarketing call must not be made to a number registered on the Register unless the telephone account holder has consented to the call. What is considered "consent" is very unclear in Schedule 2 of the draft Bill and should be further clarified for the reasons noted above.

(a) Express Consent

Schedule 2 specifically limits the duration of any express consent provided by a customer to receive telemarketing calls to a period of 3 months after the consent was provided. This requirement adds a significant administrative burden to organisations as they may be required to renew this consent each 3 months with each individual customer. This would require significant resources and involve considerable cost to obtain each individual customer's change of consent, and be burdensome for the customers involved. Telstra believes this requirement to be impracticable and believes that the cost associated with such an administrative burden would far outweigh any benefits to consumers. Telstra submits that this requirement should be removed from the Bill and that express consent should remain until withdrawn by the customer.

Further, Telstra submits that a call made to a customer who has expressly consented to receive contact from that supplier should be included as a "Designated Telemarketing Call" in Schedule 1 so such a telemarketing call will be an exempt call for the purpose of the Bill.

(b) Inferred Consent

Schedule 2 of the Bill specifies that consent to receive telemarketing calls by customers can be reasonably inferred from the conduct and the business and other relationships of the individual or organisations. The Explanatory Memorandum to the Bill (EM) then states that whether or not a person has consented to a telemarketing call will be a question of fact to be determined according to each particular set of circumstances.

Telstra believes that it should not be left to each factual situation to determine if a customer has consented to the receipt of a telemarketing call as this will be administratively unworkable for suppliers and the Register and may lead to confusion among customers as to when they may expect to receive telemarketing calls.

Rather, Telstra submits that greater certainty can be achieved by including telemarketing calls to customers with whom a supplier has an existing business relationship, as a "Designated Telemarketing Call" in Schedule 1 so this will be an exempt call for the purpose of the Bill. Customers who do not wish to receive marketing calls from entities they are currently contracting with may continue to use the existing option of registering an opt out with those suppliers specifically.

What constitutes an existing business relationship for the purposes of this proposed exemption should be specified in the "Definition" section in Clause 4. Such a definition should take into account the broad nature of products offered by companies and related companies, and the bundling across product offerings that customers have now come to expect given they usually result in benefits to the consumer.

Further, Telstra submits that an existing business relationship should exist for at least so long as an individual has made an inquiry, application, purchase, or transaction regarding any products or services offered by the supplier making the telemarketing call or a related entity, or is otherwise in an ongoing relationship with the supplier. An example of the latter point would be

a prepaid mobile customer who is out of credit, but whose number is still active on a supplier's network and who can continue to receive calls.

At what point a customer ceases to have an existing business relationship with a supplier should also be clarified. Neither the Bill nor the EM provide any additional time after the customer has finalised an inquiry, application, purchase, or transaction with the organisation for the customer to transition away from being in an existing business relationship. For example, a company's marketing list may include customers on the Registry, given they are an existing customer and thus permitted to be marketed to. However, should the company contact such a customer the day after they have cancelled their contract, a breach would occur because the 30 day list use period would not apply since the customer was on the Register initially.

Accordingly, Telstra submits that a transition period from an "existing customer relationship" is required, given the time frame required to update customer lists and re-wash them against the Register to remove customers from campaigns. Telstra notes that an 18 month period is favoured in the US regime. Telstra recommends an exemption to allow that customers can legally receive telemarketing calls from a supplier for a period after their last transaction with that supplier.

2. Telephone Account Holder/Nominees

Clause 15 of the Bill states that an application for a telephone number to be entered on the Register may be made by the relevant telephone account holder or a nominee of the relevant account holder. Clause 39 specifies that a telephone account holder can nominate an individual to be a telephone account holder.

Telstra agrees that authorised representatives, or nominees, should be able to enter a telephone number on the Register. However, Telstra considers that authorised representatives, or nominees, must have a bona fide nominee relationship with the telephone account holder. Telstra submits that the identification of nominees should be dealt with in operational guidelines.

3. Access to the Register

Clause 19 specifies that an access seeker who wishes to access the Register must submit a list of numbers to the Australian Communications and Media Authority (ACMA) or a contracted service supplier, and that organisation will then wash the Register against the supplied list. Telstra believes that this method of list washing is impracticable particularly in light of the volume of requests that will be received by the Register and the requirement for timely replies.

For example, significant resources will be required to run list washing for all telemarketing activity in Australia, which will add considerable cost to the running of the Register. Difficulties would arise if lists were not returned within a day. For large organisations which conduct thousands of separate telemarketing campaigns annually, this could prove to be administratively unworkable.

Telstra submits that organisations should be permitted the option to receive the contents of the Register on a regular basis, and conduct their own list washing activities internally. Such organisations are quite capable with specified privacy controls of protecting the integrity of the Register and its contents.

4. Usage Limitations

Clause 11 essentially provides that organisations will have 30 (calendar) days to use their lists after they have been washed against the Register. Telstra believes this time frame is too short, given the work required to prepare a list for use after it has been washed against the Register and actually make the calls. Rather, Telstra submits that a 45-60 day timeframe for use of the list once washed by the Registry is more appropriate and workable.

5. Market Research

Both the Bill and the EM fail to adequately explain the manner in which market research calls to customers will be impacted by the implementation of the Register. This only adds to the confusion felt by organisations which use market research to actively improve the entire customer experience.

Telstra submits that market research calls should be included as a "Designated Telemarketing Call" in Schedule 1. Market Research calls could then be defined as telephone calls with purely a market or social research objective. The research objective would be solely directed at determining the individual needs, wants, preferences, desires or opinions of the consumer market or sub-section of the market. No products or services may be promoted or offered for sale during such a telemarketing call. In this way, a pure market research call would be an exempt call for purposes of the Bill.

6. Penalties

The Part 4 Civil Penalties provisions indicate that penalties are to be imposed on a 'per call' basis. Telstra believes the proposed per call penalty structure to be unfair. This method penalises large organisations that make a high volume of telemarketing calls, particularly if an error occurred in a large list, that was duplicated with each call.

Telstra submits that penalties should be imposed on a ratio of telemarketing call breaches measured against that organisation's total volume of telemarketing calls, or that a breach be viewed on a per event basis.

7. Overseas Compliance

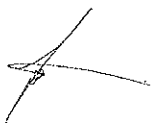
To support enforcement of the Bill against entities which are not operating within Australia, Telstra submits that, should an overseas entity breach the Bill by telemarketing to a person who is on the Register (and to whom permitted exemptions do not apply), any resulting contract should be voidable at the customers' discretion.

8. ADMA Do Not Call Register

Telstra submits that current registrants of the ADMA Do Not Call Register should have their registration details transferred to the Do Not Call Register on its commencement. Specific details regarding this transfer should be dealt with in the operational guidelines.

We would be pleased to discuss these recommended amendments with you. If you require any additional clarification please do not hesitate to contact my office.

Yours sincerely



Tony Warren
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Public Policy & Communications