

Submission to the Senate Committee Enquiry on the proposed expansion of the Do-Not-Call Register (DNCR)

4 February 2010

From: Grahame Manns
Director
The Write Response

Dear Committee Members,

I have previously made submissions direct to the Minister and to the Shadow Minister for Communications on the proposed expansion of the national DNCR.

I believe that during the middle of last year when the expansion was first proposed the Minister for Communications received at least 250 letters expressing opposition to the proposal as well as formal representations from small and large businesses and business organisations. I would like to ensure that the Committee is aware that a considerable number of complaints have been received by the Minister and that they do not appear to be reflected in the submissions to this enquiry.

Our company is a fax marketing provider; for the past 18 years we've been helping more than 2,000 small and large businesses, government authorities and professional associations in Australia and New Zealand reach the education sector. The points below are made in the framework of our experience of the UK's DNCR, the Fax Preference Service, and as it relates to the education sector. While the proposed expansion of the DNCR is an opt-in list our experience is that in the UK more than 80% of all schools registered – effectively banning direct phone and fax advertising and damaging small businesses in particular.

The Minister has stated that there are "rising community concerns" about telemarketing but he has presented no evidence to support this claim. In the pursuit of the expansion of the DNCR the Minister fails to recognise the simple but considerable difference between business-to-consumer telemarketing and business-to-business telemarketing and fax marketing. B2B telemarketers never call after business hours, B2B marketers are highly discriminate in their selection of prospects and carefully plan how and when to approach new prospects with offers of products and services. Without exception, every company we work with maintains their own marketing opt-out list as a matter of course.

The expansion of the DNCR to cover business-to-business communications will stifle business, innovation and the creation of new businesses. It will lead to the closure small businesses and increase the concentration of supply and production of goods and services in favour of incumbent and larger businesses. The expansion of the DNCR will lead to greater unemployment and, in our specific sector, will lead to higher prices for education products and services which are largely paid for by the State and Federal Governments.

We are completely opposed to the expansion of the DNCR. However, should the expansion go ahead there are a number of issues I would like to bring to the notice of the committee.

1. Not for Profit organisations and professional associations will be adversely affected

While the Bill does include an exemption for charities it takes no account of the hundreds of not-for-profit organisations who, in the education sector in particular, provide a vital service to teachers, administrators and students.

Many teacher professional associations and not-for-profit organisations use fax broadcast to promote professional development courses to members and non-members at schools and other education organisations. The range of services they offer include HSC preparation and study guides for students, grant and bursary offers, student leadership seminars, professional development and conference promotions. Such bodies do market direct to their membership but they also need to reach non-member teachers and schools.

Many other not-for-profit organisations use fax broadcast to promote their services. Two of these are related to our largest banks and promote grants and financial literacy education for teachers and students as an example.

Under the Bill such organisations will be excluded from using fax and direct telephone marketing to schools listed on the DNCR.

The Bill, should it be enacted, must exempt registered not-for-profit organisations.

2. Educational Institutions will be restricted from promoting professional development and courses for higher qualifications

The Bill mentions an exclusion for educational institutions who wish to communicate with their past students which is, of course, quite acceptable. However, many Universities and Colleges (private and government), promote professional development courses, graduate programs and higher learning opportunities direct to schools and early learning centres around Australia.

There are also a number of schools who promote courses direct to other schools – for example Ivanhoe Professional Learning (Ivanhoe Grammar School in Victoria) regularly promotes professional development courses in a range of areas direct to schools in Victoria and Tasmania.

In the higher education sector private providers such as the Carrick Institute of Education regularly promote higher certificate courses to child care staff by fax broadcast direct to child care centres. The Charles Darwin University promotes similar courses in early childhood direct to primary schools and child care centres by fax broadcast. Registered Training Organisations will also be unable to promote courses to potential students.

The Bill will make it harder for teachers, child care staff and administrators to find out about professional development courses and upgrade their qualifications – a desire of both State and Federal governments.

The Bill, should it be enacted, must exempt education providers and RTO's as defined under State and Federal Acts.

3. The Opt In provisions for certain types of marketing adds an additional layer of complexity

The proposal ignores the damning report published by the UK Direct Marketing Association on the impact of the DNCR in the UK when it was expanded to include business phone and fax. In short, the UK experience is that the DNCR has had a devastating effect on exactly the people it was meant to protect, small and medium businesses.

The opt-in for various marketing types described in the Bill and yet to be defined by ACMA adds a layer of complexity for businesses marketing to potential clients. Determining exactly what the definitions ACMA finally chooses apply to the opt-in categories will be a minefield for business. For example, is an eBook a book or is it software? What is an “educational” publication – is it just textbooks or can it also be teaching tools, and books by educational thinkers and commentators?

I am just speculating but the opportunity for businesses to get a classification wrong – in the eyes of the Bill/Act – may well be numerous and lead to unnecessary complaints and, therefore, lost time and money for both the business and the recipient.

The Bill, should it be enacted, should not include such a complex and arguable system of advertising classification.

4. The Bill will have a negative impact on small businesses by restricting new entrants to the market

The Bill will make it more expensive for all businesses to advertise their products and services. Many small businesses will not be able to afford to promote themselves by the only remaining modes, direct mail and display advertising, and may well cease trading. Senator Conroy has received more than 250 letters from small businesses on this point.

Larger businesses, who may be able to afford to promote themselves by more expensive advertising modes, will come to dominate the market. New entrants to the market will find it extremely difficult to promote themselves against the larger, entrenched businesses which will lead to fewer options for consumers and, as we’ve seen in the past with market monopolies in other areas, higher prices, lower service levels and generic products (potentially sourced from other countries). Any expansion of the DNCR will cost jobs.

An exemption for businesses under a predetermined turnover will make it easier for start-ups and will ensure that the thousands of small businesses who rely on direct contact with their potential markets will not be disadvantaged. Many micro-businesses provide unique, highly tailored products and services directly relevant to the Australian education sector and a turnover limit of \$2,000,000 (in line with the small business tax breaks recently offered by the Federal Government) will ensure that they can continue to operate and that new entrants will be able to compete in a free market.

The Bill, should it be enacted, must exempt small/micro businesses with a turnover of less than \$2,000,000.

I would be happy to expand on any points and/or provide you with relevant examples should you wish.

Yours sincerely

—

Grahame Manns