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21 February 2020

Submission on the *Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019*.

Dear Members,

The Australian Conservation Foundation (ACF) would like to thank you for the opportunity to make a submission to the Senate Standing Committees on Environment and Communications on the *Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019 (Bill)*.

The Australian Conservation Foundation (ACF) is Australia's oldest national environmental organisation, founded in the mid-1960s with the support of eminent Australians, the Australian community and the Australian Government. ACF is strictly non-partisan and we are proud of our political independence. Over the past 50 years our independent advocacy has helped drive extraordinary commitments from governments of all political persuasions as well as from business and communities. Since its creation some 50 years ago, ACF has been the leading national advocate for the environment. ACF protects, restores and sustains Australia's environment through research, consultation, education, partnerships and advocacy.

ACF supports reforms to the *Spam Act 2003* that would require political parties to provide an unsubscribe function for all unsolicited electronic communications containing political content.

However, as a leading registered charity, ACF holds a number of significant concerns about the Bill's proposed amendments to the *Do Not Call Register Act 2006* and believes that it should not be passed without amendment. ACF's primary concern is the disproportionate and detrimental impact that such an amendment would have on the fundraising work of Australia's charities, particularly at a time of significant charitable need following the recent bushfires.



Section II of this submission contains proposed amendments, which seek to address some of the concerns with the Bill, for the Committee to consider.

I. The Bill will limit charitable fundraising at a time of national need

The importance of charitable fundraising

Australian charities undertake extremely valuable community work in the public interest. For example, in the areas of education, land management, environmental protection, health and community services, to name but a few. The value of the charitable sector is significant, both in terms of contribution to public good and as an employer.

This significant charitable work would not be possible without fundraising laws which support fundraising and philanthropic donations to charities. The current exemption for charities that permits telephone numbers on the Do Not Call Register to be contacted is a long-standing and essential part of the regulatory framework that enables charitable fundraising in the public interest.

Currently, Australia is emerging from one of the most catastrophic environmental disasters in its history – the 2019/2020 summer bushfires – which have impacted communities across the country. In our view, this amendment comes at the wrong time and with no consideration of the long-term impact on charitable fundraising by charities.

The Bill is unnecessary and disproportionate

Existing regulation is sufficient

Australian charities are highly regulated, both by the regulatory structures of the Australian Charities and Not-for-profits Commission, and tax and fundraising laws across Australia.

Many charities, including ACF and others undertaking telephone fundraising, i.e. those directly affected by the proposed reform, are voluntarily self-regulated by the Fundraising Institute of Australia Code (FIA Code).



Self-regulation to high ethical standards already occurs

The FIA Code establishes high standards of ethical conduct across the charitable sector, and adherence to the Code is a requirement of FIA membership.

We draw your attention to a critical aspect of the Code, at Part 4, regarding Conduct towards Donors:

4.3 Members will, if asked:

a) provide the contact details of the Cause on whose behalf the Member is fundraising;

b) assist donors to stop receiving solicitations;

c) provide information about how the Donor's contact details were obtained; and

d) provide information about how to make a complaint or the name and contact details of the person who is responsible for handling compliance.

ACF is of the view that, and indeed complies with best practice that, where a person asks not to be contacted they are removed from a call list and not contacted again. This ensures compliance in a quick and easy manner with section 4.3(b) of the FIA Code.

ACF considers that it is unnecessary to enact regulation where there is already an appropriate self-regulatory scheme. Indeed, it is highly desirable to facilitate self-regulation.

Disproportionate "blanket" approach

ACF considers that the proposed system to "opt out" of contact is a disproportionate regulatory response. This is particularly the case, given that there is no clarity around the particular administration of the "opt out" scheme, and notably whether an individual would have an opportunity to express preference for contact from some types of charities, or all charities.

There would be a detrimental impact on important fundraising work if a person ticked a blanket "opt out" option from all charitable contact, when in fact, it is our experience that notwithstanding some people do not wish to be contacted by a specific type of charity, they will gladly engage and donate to other charities with whom their views align or in times of emergency need (such as in relation to the bushfires).



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We consider that it is both easier and quicker for the person concerned to simply ask the calling charity not to contact them again rather than the person having to proceed with an online or other “opt out” process, and less regulatory burden than establishing and administering the type of “opt out” scheme envisaged by the Bill (via a website or otherwise). This process would also deliver a fairer outcome by not providing a blanket exclusion for all charities.

The Bill is not supported by evidence

ACF’s final concern with the proposed amendment is that it appears to rely on largely anecdotal evidence from a very small group of complainants. There does not appear to be any data that provides support for the proposition that this is a necessary reform due to any widespread or significant problem. ACF’s own anecdotal experience in telephone fundraising is that the proportion of serious complaints is very minor, and where complaints do occur these can be dealt with swiftly and to the satisfaction of the complainant on a case-by-case basis.

The lack of evidence and data supporting this reform ought to lead the Committee to conclude that the potential for significant detrimental impact on charities outweighs any potential irritation from a small proportion of purportedly affected people, and on this basis should be rejected. This is particularly the case given the high value and importance of charitable work.

II. Proposed amendment

In light of the above concerns, ACF does not support the Bill’s amendments to the *Do Not Call Register Act 2006*.

However, we propose the following amendment to the Bill should the Committee nonetheless form the view that the law requires reform. ACF proposes deletion and replacement of the proposed amendments to the scheme with a simple additional provision that codifies existing best practice and is consistent with equivalent provisions under the Spam Act.

Proposed amendment:

Delete and replace proposed amendment items numbered 3 – 15 of the Bill with a new provision:



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- (1) If a charity is informed in a telephone call or by any other communication, that a person does not wish to be contacted by the charity by telephone, the charity must, within 30 days take action to prevent the telephone number being contacted.
- (2) A charity must not telephone, or cause to be telephoned, a person who has informed the charity that they do not wish to be contacted by the charity.

If you have any questions in relation to this submission or would like to invite oral submissions before the Committee, please contact me

Yours sincerely,

Cheryl Pultz
Director of Fundraising