

Committee Secretary
Senate Standing Committee on Environment, Communications and the Arts
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Canberra ACT 2600

**AANA Submission to the Senate Standing Committee on Environment, Communications and the Arts
Inquiry and Report on the Do Not Call Register Legislation Amendment Bill 2009**

The Australian Association of National Advertisers (AANA) welcomes the opportunity to provide comment in response to the above bill.

AANA, as the peak body for over 80 years, represents the rights and responsibilities of companies involved in the advertising, marketing and media industry contributing in excess of \$30 billion to the Australian economy annually.

Recommendation

AANA strongly recommends the Do Not Call Register Legislation Amendment Bill not be introduced at this time.

AANA considers that the current proposal is not based on an adequate assessment of the potential impact on all businesses and organisations in Australia and thus the Australian economy.

AANA notes that no evidence has been presented:

- of the true extent of concerns or impact on Australian businesses and the economy of the proposed legislation
- in relation to exploration of, and consultation on, other policy options to address any identified community and commercial sector concerns.
- indicating the likely level of businesses wishing to join the register. Without a significant number of businesses joining the register the compliance obligations on the vast majority of business are difficult to justify.

The current proposal will have a much broader impact on businesses than that reflected by the introduction of the Bill. AANA notes that if this Bill is enacted it will not only apply to large businesses and the tele- and fax-marketing sector but also most if not all small/medium and micro enterprises, new entrants to the market including small business and sole operator start-ups as well as other organisations such as not-for-profit organisations and associations. AANA suggests a more comprehensive cost/benefit and regulatory impact assessment is required for this Bill.

AANA does, in-principle, support that some action be taken to address concerns relating to telemarketing calls to emergency services.

Comments

AANA does not consider that business-to-business marketing or contact of businesses by suppliers, or sales and marketing personnel can be equated with the business-to-consumer situation.

Business-to-business and prospective business-to-business telephone contact is a fundamental business activity and one that achieves significant results in driving economic activity. Such contact is expected by businesses and the vast majority are equipped to handle (or if necessary, screen) such calls. Given the current economic climate AANA believes stronger justification must be provided before introducing new regulatory compliance obligations and costs to businesses and individuals that have the potential to interfere with normal commerce, hinder business growth, increase business costs and reduce profitability and innovation.

AANA also supports, and reiterates, the Council of Australian Government (COAG) principles and features of good regulation particularly in relation to minimising the regulatory burden on the public and the administrative burden on government and the sectors of the community that will be affected. In the current instance, this includes advertisers and marketers.

The extent of the potential burden on Australian businesses and organisations can be understood when the following Australian Bureau of Statistics (as at June 2007) statistics are considered:

- There were 2,011,770 actively trading businesses in Australia;
- 501,467 (25%) businesses had a turnover between zero and \$50k, 742,288 (37%) had a turnover from \$50k to less than \$200k, 646,458 (32%) had a turnover from \$200k to less than \$2m, and 121,557 (only 6%) businesses had a turnover above \$2m per annum.
- In the period June 2006-07, entry rates were highest for businesses with turnover between zero to less than \$50k (21%).
- Businesses with turnover from \$50k to less than \$200k had the lowest survival rate at 53%.
- There were 1,171,832 (58%) non-employing businesses.
- Most employing businesses, 755,758 (90%) employed less than 20 employees and of these 527,445 (70%) had only 1-4 employees¹.
- **The main source of income for more than 50% of businesses came from large, medium and small businesses and organisations eg the business-to-business relationship.**
- The Australian general public was the main source of income for less than half all businesses.²
- In December 2007 there were 964 000 business and government internet subscribers; this is less than half of all trading businesses³.

The current *Do Not Call Register Act 2006* definitions for 'telemarketing call' and 'designated telemarketing calls' means that a significant proportion, if not all, businesses and a much broader range of organisations will be affected by the Bill if enacted. For example, the Bill will capture micro-businesses, often sole operators, and individuals starting a business – those that can least afford the additional financial and resource burden. There are many not-for-profit and membership-based representative organisations under corporation or association structures operating on limited budgets and resources that engage with businesses directly to establish sponsorship or other commercial relationships. For example, the provisions would apply to an industry representative association when

¹ Australian Bureau of Statistics, 8165.0 - *Counts of Australian Businesses, including Entries and Exits, Jun 2003 to Jun 2007*, www.abs.gov.au

² Australian Bureau of Statistics, 8167.0 - *Selected Characteristics of Australian Business, 2006-07* <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/8167.0Main%20Features32006-07?opendocument&tabname=Summary&prodno=8167.0&issue=2006-07&num=&view=>

³ <http://www.dfat.gov.au/facts/ict.html>

contacting businesses in the respective industry sector by phone to promote their services, including membership.

AANA notes that the Minister for Infrastructure, Transport, Regional Development and Local Government in the second reading speech introducing the Bill stated that 86% of (176) submissions in response to a 2008 consultation on this matter supported the proposal; many of these were from individuals and individual small businesses⁴. However, AANA contends that this statement somewhat misrepresents the support for the proposal. We note that some of the submissions that did not support the proposal for business numbers to be included in the register were from industry organisations that represented the views and interests of **many hundreds of individual businesses and organisations**. If the views of all businesses represented through the submission process are accounted for, then the outcome of the consultation is the overwhelming non-support for the proposal.

AANA acknowledges the concerns of those submitters in support of the proposal, however, it does not assert that nothing be done, but questions whether the current proposal is an appropriate response to those concerns.

The Minister in addressing the compliance cost issue in the second reading speech appears to focus on larger scale tele- and fax-marketing operations. What has not been identified or addressed is the impact on the many hundreds of thousands of small businesses and new business entrants.

A few illustrative examples:

- a young person soon after finishing school with very limited resources wishes to establish a business with clients being other businesses. As this person does not have any established business relationships, how will they effectively advertise themselves to prospective clients without the obligation of registering and ‘washing’ a few phone numbers and keeping the relevant records as advised by the Australian Communications and Media Authority. Given their limited resources they are unlikely to be able to invest in a range of marketing activities which are more complex and expensive and potentially less effective than simply making a phone call.
- A small home-based business in a small regional or country centre wishes to service a new business in their local area. Must they go through the same processes of pre-checking the phone number before approaching this local business? How much more appropriate is it to write an unsolicited letter or visit the business unannounced?
- A business person in the construction industry is given a business contact by a third party for potential work (common practice in this industry). Must the business person ‘wash’ this one phone number? Many small business operators do not have business internet access (refer to ASB statistics above).

AANA contends that the Bill introduces unnecessary administrative burden and barriers to business, competition and innovation that have not been addressed.

AANA does not consider the imposition of a regulatory burden requiring a person to ensure that they do not attract liability in contacting a business by phone or fax are warranted as no other policy options have been assessed which may be capable of reducing the concerns of some businesses, for example, awareness raising of the issue.

AANA also questions whether the current consent provisions in the *Do not Call Register Act 2006* are appropriate if business numbers are to be included on the register. The Act provides that consent may

⁴ As available on the Department’s website 20 January 2010.

not be inferred from the mere fact that a telephone number has been published (Schedule 2, section 4). However, currently there is extensive national and international marketing within the business-to-business sector where contact details, including phone numbers, are purposely promoted by businesses eg such as listing on the numerous B2B internet portals and other B2B directories. Examples include the Government's Austrade website which includes the *Health & Medical B2B Portal*⁵, the Australia & New Zealand B2B Products Directory⁶ and free SE Queensland B2B Network Directory⁷. Can consent be inferred from this practice? If such advertising is deemed to infer consent is given how would the 3 month rule in the Act apply?⁸

AANA would welcome the opportunity to expand on this submission before the Inquiry by the Senate Standing Committee on Environment, Communications and the Arts.

Yours sincerely



Scott McClellan
Chief Executive Officer

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⁵ <http://www.austradehealth.gov.au/Health-and-Medical-B2B-Portal-Biomedical-Devices/default.aspx>

⁶ http://www.ausb2bdirectory.com.au/about_us1.cfm

⁷ http://www.seo-optimise.com.au/seqld_business/

⁸ Schedule 2, 3....(b) the consent is not expressed to be for a specified period or for an indefinite period; the consent is taken to have been withdrawn at the end of the period of 3 months beginning on the day on which the consent was given.