
The Parliament of the Commonwealth of Australia

Advisory Report:

Do Not Knock Register Bill 2012

**House of Representatives
Standing Committee on Social Policy and Legal Affairs**

September 2012
Canberra

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Inquiry information

On 24 May 2012, the Selection Committee referred the Do Not Knock Register Bill 2012 to the House of Representatives Social Policy and Legal and Affairs Committee for inquiry and report.



List of acronyms

ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
APF	Australian Privacy Foundation
APPs	Australian Privacy Principles
CALC	Consumer Action Law Centre
CUAC	Consumer Utilities Advocacy Centre
DSAA	Direct Selling Association of Australia
FCA	Financial Counselling Australia
OAIC	Office of the Australian Information Commissioner

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List of recommendations

Recommendation 1

The Committee recommends that the House of Representatives not pass the Do Not Knock Register Bill 2012 at this time.

Do Not Knock Register Bill 2012

- 1.1 The Do Not Knock Register Bill 2012 was introduced into the House of Representatives on Monday, 21 May 2012. The Do Not Knock Register Bill 2012 is a Private Member's Bill proposed by Mr Steve Georganas MP.

Scope of the Bill

- 1.2 The Do Not Knock Register Bill 2012 sets up a scheme, enabling individuals to opt out of receiving unsolicited marketing calls to residential and government addresses. Under the scheme, unsolicited marketing calls are prohibited to addresses registered on the Do Not Knock Register. The main remedies for breaches are infringement notices, civil penalties and injunctions.
- 1.3 The Do Not Knock Register Bill 2012 permits 'designated marketing calls' from certain organisations and individuals including government bodies, charities, religious organisations, politicians and political candidates.

Referral

- 1.4 On 24 May 2012, the Selection Committee referred the Do Not Knock Register Bill 2012 to the House of Representatives Social Policy and Legal and Affairs Committee for inquiry and report.

Reason for referral

- 1.5 The Selection Committee provided 'the constitutionality of the bill' as the reason for referral/principal issue for consideration.¹

Senate Scrutiny of Bills Committee

- 1.6 The Senate Scrutiny of Bills Committee raised some concerns about the Do Not Knock Register Bill 2012, including that:
- the explanatory memorandum is inadequate, and
 - the privilege against self incrimination is abrogated.²

Conduct of the inquiry

- 1.7 The inquiry into the Bill attracted some interest from the community and from industry. Although the Selection Committee cited only the constitutionality of the Bill as the reason for referral, it became clear to the Committee that consideration was required regarding the proposed operation of the Bill and its capacity to address its policy intent.
- 1.8 Accordingly, the Committee sought submissions from those industry sectors likely to be most affected by the implementation of the Bill, and from peak consumer advocacy groups regarding the issue of door to door salespeople. In addition the Committee received submissions from other community advocacy groups and from a number of businesses across different sectors. The Committee received 18 submissions and three supplementary submissions. A list of submissions is at Appendix A.
- 1.9 The Committee held public hearings on 22 and 23 August 2012 with consumer advocacy groups, industry peak bodies and Mr Steve Georganas MP. A list of witnesses is at Appendix B.
- 1.10 The Committee did not attempt to conduct wide ranging consultation on the Bill. This is not generally considered the task of a Committee advisory report.
- 1.11 The Committee acknowledges that in this instance the Bill and the concept of a Do Not Knock Register have not been through a detailed consultative

1 The Selection Committee report of 24 May 2012 <<http://www.aph.gov.au/committees>> viewed 12 July 2012.

2 Senate Scrutiny of Bills Committee, *Alert Digest No 6 of 2012*, pp. 21-22 <<http://www.aph.gov.au/committees>> viewed 12 July 2012.

process. However it is not for the Committee to determine the policy merits of a bill when preparing an advisory report.

- 1.12 The Committee considers its task in this instance is to advise the Parliament on the efficacy of the Bill in achieving its objective, of potential unintended consequences of the Bill, and of the interaction of the proposals contained in the Bill with existing regulatory frameworks.

Issues raised

- 1.13 A number of issues were raised during the course of the inquiry. The Committee received evidence regarding the constitutionality of the Bill and reports on this evidence for the benefit of the Parliament in determining its consideration of the Bill. The Committee makes comment on the referral of a bill to consider its constitutionality.
- 1.14 A number of contributors to the inquiry outlined unscrupulous door to door sales practices and the need for rigorous consumer protections for vulnerable members of the community. The effectiveness and enforceability of the Do Not Knock sticker campaign was raised.
- 1.15 Certain consumer protections already exist as part of the Australian Consumer Law (ACL) framework and the Australian Competition and Consumer Commission (ACCC). The operation of these protections is considered alongside the proposals set out in the Bill. In addition, key industry sectors have self regulatory schemes to oversee door to door sales practices. Some consideration is given to the effectiveness of these schemes.
- 1.16 Finally, practical implementation issues of the Bill are examined, such as cost of set-up and administration, consumer take up rates of a Register, and effectiveness at curbing the practices of rogue salespeople.

Constitutionality

- 1.17 Professor George Williams, a constitutional lawyer and academic, noted that the definition of 'marketing call' in section 5 of the Bill was critical to its interpretation. The operative provisions of the Bill, that is, sections 8 and 9, depend on the definition of this term.
- 1.18 Other matters dealt with by the Bill, such as the creation of a Do Not Knock Register, the imposition of penalties and the investigation of complaints, are incidental to the matters covered by sections 8 and 9.

- 1.19 According to Professor Williams, the regulation of marketing calls such as proposed under the Bill could fall under four sections of the Constitution. These are:
- Section 51(xx) – foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth
 - Section 51(i) – trade and commerce with other countries, and among the States
 - Section 51(v) – postal, telegraphic, telephonic, and other like services, and
 - Section 122 –making laws for the government of any territory.³
- 1.20 A Bill may be unconstitutional even if it falls under a constitutional provision if it otherwise infringes a limit imposed on the Constitution, such as the implied freedom of political communication. Professor Williams noted that the Bill has been drafted to avoid infringing this freedom.⁴
- 1.21 In conclusion, Professor Williams stated:
- It is clear that the Bill has been drafted so as to fall under heads of power... My view is that, if passed, the Bill would be a valid enactment under the Australian Constitution.⁵
- 1.22 Affected industry groups advanced an opposing view. Energy Assured Ltd, a peak body which aims to monitor and improve door to door marketing standards across the retail energy industry, told the Committee:
- ...we do not believe that sections 51(i) or 51(v) apply ... Section 51(xx) is the only head of power on which the bill could legitimately be based. However, the question of whether the corporations power can form the basis of a law regulating the actions of persons acting on behalf of a corporation – for example, a sales agent – or for the benefit of a corporation, such as an individual, is not clear.⁶
- 1.23 Industry groups representing the communications and direct sales industries agreed. The Direct Selling Association of Australia gave an example of where the corporations power might not cover door to door sales activity:

3 Professor George Williams, *Submission 1*, p. 2.

4 Professor George Williams, *Submission 1*, p. 2.

5 Professor George Williams, *Submission 1*, p. 2.

6 Ms Anne Whitehouse, Chief Executive Officer, Energy Assured Limited, *Committee Hansard*, Canberra, 22 August 2012, p. 8.

An Avon lady is typically unincorporated and conducts business locally. In these circumstances, the proposed register will not apply to the Avon lady. In other words, consumers will need to do more than register their addresses if they do not want a visit from the Avon lady.⁷

Committee comment

1.24 The Committee received evidence discussing the constitutionality of the Bill. The Committee considers it would be inappropriate for this Committee to attempt to advise the Parliament on the constitutionality of a Bill.

1.25 House of Representatives Practice makes it clear that the interpretation of the Constitution rests with the High Court, rather than the Parliament. It states that:

Speakers have generally taken the view that, with the exception of determination of points of procedure between the two Houses, the obligation to interpret the Constitution does not rest with the Chair and that the only body fully entitled to do so is the High Court. Not even the House has the power finally to interpret the terms of the Constitution.⁸

1.26 Further, on different occasions the Speaker has stated that it is not the intention of the Speaker to limit the House by determining what it may or may not consider, and the House is 'master of its own destiny'. In relation to the interpretation of the law, the Chair has ruled:

- A question of law should be asked of the Attorney-General, not the Speaker;
- It is not the duty of the Speaker to give a decision on (to interpret) a question of law; and
- A very heavy tax would be imposed if the Speaker, as soon as any motion or bill were introduced, were expected to put the whole of the Crown Law Offices into operation in order to see whether what was proposed to be done was in accordance with the law.⁹

1.27 The Committee is of the view that it certainly does not fall to this Committee to make any ruling on the constitutionality of a bill, or indeed to proffer any advice on such to the House. Rather, the Committee has

7 Mr John Holloway, Executive Director, Direct Selling Association of Australia (DSAA), *Committee Hansard*, Canberra, 22 August 2012, p. 16.

8 House of Representatives Practice 6th edn, 2012, p. 191.

9 For references to the Chair's rulings, see House of Representatives Practice 6th edn, 2012, p. 192.

reported to the House a summary of evidence regarding the constitutionality of a bill in order for the House to inform itself.

- 1.28 However, the Committee wishes to advise the Selection Committee that it considers such reasons for referral as inappropriate. Should a Member of the House question the constitutionality of a bill, then that question should be put to the Attorney-General and it is for the House to determine if it will consider the Bill, and ultimately for the High Court to determine the validity of a Bill if passed.

Protections for consumers

- 1.29 Mr Georganas MP, the Member of Parliament proposing the Bill, cited the reasons behind the Bill as twofold:
- to protect vulnerable consumers who could be taken advantage of, or even preyed upon, by unscrupulous salespeople, and
 - to give consumers the choice as to whether a salesperson could come knocking at their door.¹⁰
- 1.30 The two reasons Mr Georganas cited are discussed in the following sections, with the issue of consumer choice examined in the context of the Do Not Knock sticker initiative.

Vulnerable consumers

- 1.31 The Committee heard substantial evidence about vulnerable consumers, such as Aboriginal and Torres Strait Islander people, migrants and the elderly, being targeted by certain salespeople.

- 1.32 The Consumer Utilities Advocacy Centre (CUAC) raised concerns about unscrupulous marketing practices targeting Aboriginal and Torres Strait Islander people. As a result of research conducted in Victoria with Aboriginal consumers, the CUAC reported that:

A lower literacy rate means that some Aboriginal people are unable to interpret written information on offers. Consumers and service providers also suggested that Aboriginal people are more likely to feel intimidated in official or bureaucratic interactions and uncomfortable asserting their rights. Participants also spoke about what was sometimes called the 'yeh yeh yeh factor', the tendency to agree to a proposition put rather than to disagree or argue.¹¹

- 1.33 Similarly, Financial Counselling Australia (FCA) reported in their submission that the current legislative regime does not adequately protect

10 Mr Steve Georganas MP, *Committee Hansard*, Canberra, 23 August 2012, p. 2.

11 Consumer Utilities Advocacy Centre (CUAC), *Submission 8*, p. 2.

Aboriginal and Torres Strait Islander people from unscrupulous door to door selling. Some of the problems FCA cited include:

- misleading conduct;
- overpriced or shoddy goods;
- vulnerability (particularly where English is not the first language spoken in the home); and
- affordability.¹²

1.34 Ms Fiona Guthrie from FCA outlined the ‘systemic’ targeting of Indigenous consumers in remote communities where ‘shoddy, overpriced products [are] sold to vulnerable people who cannot afford them’.¹³

1.35 Ms Guthrie said that educational materials, such as flashcards and stickers have been popular resources for financial counsellors working with Indigenous communities.¹⁴

1.36 Ms Guthrie explained that similar ‘targeting’ goes on with some migrant communities where there may be low literacy rates and where migrants may feel intimidated in bureaucratic or official situations. Ms Guthrie said that this issue is especially concerning where salespeople may present themselves falsely as government officials. She gave examples of where ‘Burmese and African migrants who were illiterate were signed up to expensive phone and internet plans’.¹⁵

1.37 Ms Guthrie suggested that the problem is so serious that some people even hide when their door is knocked.¹⁶

1.38 Similarly, Mr Georganas MP reported that in his electorate of Hindmarsh (in Adelaide):

Many of our newly-arrived migrants, when they see someone turn up at their door with a folder and looking very official, will sit there and participate in the discussion and, when someone says, “This will be much cheaper for you and it will not cost you anything, just sign here,” we have seen many constituents do so.¹⁷

1.39 The Committee heard that elderly people are at risk from being targeted by unscrupulous salespeople. Mr Georganas MP was particularly concerned for elderly people with dementia and described how the elderly

12 Financial Counselling Australia (FCA), *Submission 9*, pp. 2-3.

13 Ms Fiona Guthrie, Executive Director, FCA, *Committee Hansard*, Canberra, 22 August 2012, p. 7.

14 Ms Fiona Guthrie, Executive Director, FCA, *Committee Hansard*, Canberra, 22 August 2012, p. 2.

15 Ms Fiona Guthrie, Executive Director, FCA, *Committee Hansard*, Canberra, 22 August 2012, p. 2.

16 Ms Fiona Guthrie, Executive Director, FCA, *Committee Hansard*, Canberra, 22 August 2012, p. 2.

17 Mr Steve Georganas MP, *Committee Hansard*, Canberra, 23 August 2012, p. 1.

may be more likely to enter into unwanted agreements at the door.¹⁸ He explained how high pressure sales tactics may be confronting for elderly people, and those on limited incomes may be more susceptible to claims of special deals or promises of cheaper energy bills.¹⁹

1.40 National Seniors Australia, Australia's 'largest organisation representing the interests of those aged 50 and over'²⁰ said that the elderly are particularly vulnerable to high pressure sales tactics.²¹

1.41 National Seniors Australia voiced support for the Bill, and said that 'implementation of a "Do Not Knock Register" will give elderly Australians the opportunity to opt out of door-to-door sales and will empower those who are most vulnerable'.²²

1.42 By contrast, the Consumer Action Law Centre (CALC) was of the view that the online registration mechanism proposed by the Bill would not fully improve the protections available to vulnerable consumers. CALC said that:

We are particularly concerned about marginalised groups such as those from non-English speaking backgrounds, Indigenous consumers, the elderly and those living with a disability. The experience of consumer and welfare agencies is that these groups are particularly vulnerable to door-to-door marketing. Community education should be well funded and focus on these groups, including outreach to facilitate addresses to be registered, so that online registration is not the sole way in which an address can be registered.²³

Consumer choice: the Do Not Knock sticker initiative

1.43 The second reason Mr Georganas MP cited for introducing the Bill was to give consumers the choice as to whether a salesperson could come knocking at their door.²⁴

1.44 The Committee received substantial evidence referring to mechanisms that are already in place to give consumers that choice, particularly the Do Not Knock sticker initiative.²⁵

18 Mr Steve Georganas MP, *Committee Hansard*, Canberra, 23 August 2012, p. 1.

19 Mr Steve Georganas MP, *Committee Hansard*, Canberra, 23 August 2012, p. 5.

20 National Seniors Association, *Submission 11*, p. 2.

21 National Seniors Association, *Submission 11*, p. 3.

22 National Seniors Association, *Submission 11*, p. 3.

23 Consumer Action Law Centre (CALC), *Submission 5*, p. 8.

24 Mr Steve Georganas MP, *Committee Hansard*, Canberra, 23 August 2012, p. 2.

- 1.45 Together, the CALC and FCA launched a Do Not Knock sticker in 2007, relaunching the initiative in 2011.²⁶ Figure 1 is a copy of the image used in the sticker initiative.

Figure 1 Do Not Knock sticker produced by Consumer Action Law Centre and Financial Counselling Australia



Source <http://donotknock.org.au/take-action/print-your-own/>

- 1.46 The sticker is available at 86 community locations across Australia and free of charge on a website.²⁷ State governments in Queensland, South Australia and Tasmania, Members of Parliament, energy providers and local councils distribute similar stickers.²⁸ CALC described the campaign

25 See, for example CALC, *Submission 5*, p. 2; Alinta Energy, *Submission 10*, p. 1; Australian Privacy Foundation (APF), *Submission 14*, p. 1; Energy Assured Limited, *Submission 3*, p. 2; Queensland Consumers Association, *Submission 6*, p. 1; FCA, *Submission 9*, p. 1.

26 CALC, *Submission 5*, p. 2.

27 CALC, *Submission 5*, p. 2; Ms Catriona Lowe, Co-Chief Executive Officer, CALC, *Committee Hansard*, Canberra, 22 August 2012, p. 5.

28 CALC, *Submission 5*, p. 2; Communications Alliance, *Submission 7*, p. 2.

as being 'enormously popular', with almost 200 000 stickers being distributed from August 2011 to August 2012.²⁹

- 1.47 The legal authority behind the sticker could rely on the law of trespass, which involves the deliberate or careless interference with someone else's land. There is an implied licence that allows salespeople to enter public parts of private property, such as a driveway or path, but a 'keep out sign' can void this licence. Hence, ignoring a Do Not Knock sticker could amount to unlawful trespass.³⁰ Ignoring a Do Not Knock sticker could also amount to a breach of the ACL provisions. This concept is currently being tested in court by the ACCC.³¹
- 1.48 As part of the ACCC's campaign to improve consumer awareness and the protections provided to consumers from door to door sales, the ACCC has developed its own version of the Do Not Knock sticker.
- 1.49 However, the number of stickers distributed is small compared to the number of total households in Australia, and greater promotion of the sticker may be necessary to fully realise its effectiveness. There is a clear demand for the sticker, as evidenced by the increased requests for stickers following the launch of the ACCC's campaign. Many consumers may prefer to use the sticker than go to the trouble of registering on a Government database.
- 1.50 Affected industry groups voiced consistent support for the Do Not Knock sticker campaign.³² Salmat, a field sales business and a member of Energy Assured Limited, supports the initiative, because they 'do not want to sell to a customer who does not want to be sold to'.³³ Alinta Energy described the sticker as 'simple, low cost, efficient and easily accessible... effective'. Alinta Energy suggested that standardising the stickers in size and colour would make compliance easier for marketers, concluding that 'any need for a Register should be predicated on the evidentiary failure of the Do Not Knock stickers'.³⁴ As industry groups preferred the sticker over more stringent forms of regulation, they assured the Committee of their compliance with the stickers.³⁵
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29 Ms Catriona Lowe, Co-Chief Executive Officer, CALC, *Committee Hansard*, Canberra, 22 August 2012, p. 5.

30 Do Not Knock, 'Legal status of the Do Not Knock sticker' <<http://donotknock.org.au/useful-stuff/legal-status-of-the-do-not-knock-sticker>> viewed 30 August 2012.

31 Australian Competition and Consumer Commission (ACCC), *Submission 16*, p. 4.

32 Energy Assured Limited, *Submission 3*, p. 2; Communications Alliance, *Submission 7*, p. 2.

33 Salmat, *Submission 4*, p. 5.

34 Alinta Energy, *Submission 10*, p. 2.

35 Ms Anne Whitehouse, Chief Executive Officer, Energy Assured Limited, *Committee Hansard*, Canberra, 22 August 2012, p. 8; Communications Alliance, *Submission 7*, p. 2; DSAA, *Submission 2*, p. 1; Alinta Energy, *Submission 10*, p. 2.

- 1.51 On the other hand, CALC claims that some salespeople ignore the stickers, and hence, the Do Not Knock Register is preferable because significant penalties apply for non-compliance.³⁶
- 1.52 The Queensland Consumers Association questioned the usefulness of the stickers and said that:
- ...stickers are unlikely to be as effective as a register for most consumers. For example, apart from the fact that stickers may be ignored or even removed by door knockers, due to physical deterioration stickers need to be replaced after some time, and some consumers do not wish to place them on doors, windows etc.³⁷
- 1.53 The Queensland Consumers Association supported the Bill, noting the success of the Do Not Call Register.³⁸
- 1.54 Similarly, Mr Georganas MP spoke of the need to enshrine the Do Not Knock consumer rights in law:
- ... [the Do Not Knock Register] would be no different from the Do Not Call Register. We know it works. We know it would be legal and we know there would be penalties and fines. It is quite clear, black and white, what the law is and what the requirements of salespeople are. There are some grey areas with the stickers ...[the Do Not Knock Register] can work hand in hand with the stickers as well.³⁹

Current legislative provisions and industry self regulation

- 1.55 In assessing whether additional protections needed to be provided for consumers and whether the Bill may achieve this goal, the Committee gave consideration to existing consumer protections. In particular, the Committee considered the ACL, which was recently introduced, and the investigative powers of the ACCC. The Committee took evidence on self regulatory schemes operating in some industry sectors.

36 CALC, *Submission 5*, pp. 6-7.

37 Queensland Consumers Association, *Submission 6*, p. 2.

38 Queensland Consumers Association, *Submission 6*, p. 2.

39 Mr Steve Georganas MP, *Committee Hansard*, Canberra, 23 August 2012, p. 3.

Australian Consumer Law protections

- 1.56 Introduced on 1 January 2011, the ACL is a single, national law concerning consumer protection and fair trading.⁴⁰ For the first time, consumers have the same protections and expectations about business conduct wherever they are in Australia. Similarly, businesses have the same obligations and responsibilities wherever they operate in Australia.
- 1.57 One of the key changes introduced through the ACL is a new national regime for unsolicited sales practices and unsolicited consumer agreements, which will replace existing state and territory laws on door to door sales and other direct marketing. It covers forms of direct selling which do not take place in a retail context, including door to door selling. The rules include:
- supplier obligations about the way in which consumers are approached and about the making of agreements
 - supplier disclosure obligations about the making of agreements, consumer rights and obligations, and
 - supplier obligations about post-contractual behaviour.
- 1.58 In summary, the protections provided are as follows:
- Under the ACL consumers have extra protections when they buy certain goods and services from door-to-door sales agents. These consumer rights apply when the sale of goods or services results from an 'unsolicited consumer agreement'. Broadly, this is an agreement that results from uninvited contact with a consumer; that is negotiated by telephone or at a location that is not the supplier's business location; and where the price exceeds \$100 (or the price is not established when the agreement is made).
- Door-to-door sales agents who make uninvited contact with consumers in order to sell them goods or services must comply with limited hours for contact with consumers; disclosure requirements when making an agreement; and specific criteria for the sales agreement (for example, it must be in writing).
- Consumers have 10 business days to change their mind and cancel the contract ('cool off') and sales agents must also comply with restrictions on supply and requesting payment during the cooling-off period. Consumers can also cancel the contract within three or

40 Australian Government, 'The Australian Consumer Law'
<http://www.consumerlaw.gov.au/content/Content.aspx?doc=fact_sheets/FAQ.htm>
viewed 30 August 2012.

six months if the supplier has not met certain obligations under the ACL.⁴¹

- 1.59 Importantly, door to door salespeople must give details such as the purpose of their visit, their name and the name of the company that they work for. Further, if a salesperson is requested to leave they must do so immediately and sales calls can only be made between 9 am and 6 pm on weekdays and between 9 am and 5 pm on Saturday.
- 1.60 In addition to the unsolicited selling provisions, the unconscionable conduct provisions under the ACL prevent businesses from engaging in behaviour which may take advantage of another's special disadvantage or vulnerability. A third layer of protection is provided by statutory warranties requiring goods and services to be of acceptable quality and fit for purpose.⁴²
- 1.61 Contraventions can attract a range of penalties including injunctions, damages, compensatory orders and non-punitive orders.⁴³ Administration and enforcement of the ACL is primarily through by the ACCC, and by state and territory consumer agencies.
- 1.62 The primary responsibility of the ACCC is to ensure that individuals and businesses comply with the Commonwealth's competition, fair trading and consumer protection laws. As well as education and information activities, the ACCC recommends dispute resolution when possible as an alternative to litigation, and will take legal action when necessary.
- 1.63 In August 2012, the ACCC launched a campaign to improve consumer awareness of rights relating to door to door sales. Several consumer information publications were released, themed *Knock! Knock! Who's There?*, with brochures available in 14 languages, a postcard and fridge magnet, and its own version of the Do Not Knock sticker. The ACCC received 7 000 requests for Do Not Knock stickers and consumer guides following the launch.⁴⁴
- 1.64 In regards to door to door selling practices, the ACCC has wide ranging powers to investigate unscrupulous sales tactics and can compel people and businesses to give information, obtain search warrants, issue public warning and infringement notices, accept court enforceable undertakings,

41 Frost and Sullivan, *Research into the Door-to-Door Sales Industry in Australia: Report by Frost and Sullivan for the Australian Competition and Consumer Commission (ACCC)*, August 2012, p. 6.

42 ACCC, *Submission 16*, p. 2.

43 Australian Government, 'Door-to-door sales: Your rights in Australia' <<https://www.moneysmart.gov.au/media/347378/kit-acl-factsheet-door-to-door-sales.pdf>> viewed 30 August 2012.

44 ACCC, *Submission 16*, pp. 4-5.

conduct litigation or refer criminal matters to the Commonwealth Director of Public Prosecutions.⁴⁵

- 1.65 In August 2012, the ACCC released a commissioned report into the door to door sales industry in Australia. The findings of the report include:
- The scale and scope of the door to door sales industry in Australia – In 2011 over 1.3 million sales were conducted through this sales channel and of these, approximately 1 million sales related to energy services. On average every home in Australia is door knocked eight times a year.
 - Industry structure– companies usually engage third party sales agents to deliver door to door sales services, with remuneration typically based on commission. This model may encourage agents to adopt tactics that are not fully compliant in order to secure more sales.
 - Non-compliance – some research participants reported preying on vulnerable ‘easy targets’, using false pretexts to hook consumers in such as pretending to have lost their dog, or failing to provide consumers with certain information as required by under the Australian Consumer Law.⁴⁶
- 1.66 The report indicates that there is a high level of non-compliance which the ACCC is addressing through the release of consumer information material and a focus on enforcement actions.
- 1.67 The ACCC has recently initiated a number of enforcement actions in regards to door to door sales, alleging unconscionable and misleading conduct and false or misleading representations.⁴⁷ The ACCC advised that this litigation will test the scope and precise application of the ACL as it relates to door to door selling, and commented that:
- It is too early to say whether or not the ACL unsolicited selling provisions will be interpreted by the Courts in a manner which will ensure the law provides adequate protection for consumers in this area.⁴⁸
- 1.68 Industry groups expressed support for the measures introduced by the ACL, even though these have placed a number of restrictions on door to door sales practices. Communications Alliance claimed that the Bill would duplicate the ACL protections and concluded that ‘there is no evidence to

45 ACCC, *Submission 16*, p. 2.

46 ACCC, ‘Knock! Knock! Who’s There? Door to door sales industry report and consumer guidance launched’ <<http://www.accc.gov.au/content/index.phtml/itemId/1070506/fromItemId/815215/fromACCC>> viewed 6 September 2012.

47 ACCC, *Submission 16*, pp. 3-4.

48 ACCC, *Submission 16*, p. 4.

- suggest that more specific legislation is necessary at this stage, nor likely to be beneficial.’⁴⁹
- 1.69 Energy, communications and direct sales industry representatives all insisted on the sufficiency of the ACL and described the Bill unanimously as ‘unnecessary’⁵⁰.
- 1.70 They objected to the Bill, considering it premature, given that the ACL was only recently introduced and that some consumer education campaigns are only just gaining momentum.⁵¹
- 1.71 As an alternative to the Bill, industry groups suggested a range of more effective measures such as increasing consumer education and awareness around the ACL provisions, and a future review of the ACL.⁵²
- 1.72 The Australian Treasury described the existing consumer protections provided by the ACL as ‘rigorous’, ‘balanced’ and ‘adequate’⁵³ and consequently it did not support the measures proposed by the Bill. The Australian Treasury noted that the ACL will be reviewed in 2015, and should the review find inadequacies or failings in the scope of consumer protections, particularly in regard to door to door sales, then these should be identified and addressed at that time.⁵⁴
- 1.73 By contrast, the Committee received evidence from consumer groups who believed that existing provisions do not fully protect consumers from unscrupulous salespeople, or those who choose not to be approached by door to door sellers.
- 1.74 For example, the Queensland Consumers Association suggested that people may not complain and marketers may refuse to admit wrong until a regulator or ombudsman is involved.⁵⁵ CUAC commented that the use of unscrupulous tactics in door to door marketing may be difficult to prove because no witnesses are present.⁵⁶

49 Communications Alliance, *Submission 7*, p. 2.

50 Energy Assured Limited, *Submission 3*, p. 3; Mr John Holloway, Executive Director, DSAA, *Committee Hansard*, Canberra, 22 August 2012, p. 16; Communications Alliance, *Submission 7*, p. 2; Alinta Energy, *Submission 10*, p. 1; Foxtel, *Submission 12*, p. 2; Simply Energy, *Submission 15*, p. 1.

51 Salmat, *Submission 4*, p. 2; Alinta Energy, *Submission 10*, p. 1; Simply Energy, *Submission 15*, p. 1.

52 See Salmat, *Submission 4*, p. 2; Communications Alliance, *Submission 7*, p. 2; Alinta Energy, *Submission 10*, p. 1.

53 Australian Treasury, *Submission 13*, p. 3.

54 Australian Treasury, *Submission 13*, p. 3.

55 Queensland Consumers Association, *Submission 6*, p. 2.

56 CUAC, *Submission 8*, p. 2.

- 1.75 CALC was concerned that, under the ACL, 'consumers can fail to exercise their cooling-off rights, despite regretting a purchasing decision'.⁵⁷
- 1.76 Mr Georganas MP agreed, emphasising that vulnerable consumers were not adequately protected by cooling off period rights:
- When you are a little bit vulnerable you could make the wrong choice at the door and then have to go through the entire process of the courts, of writing letters to managers, of proving you are not in the right frame of mind to make that decision at that point in time. Many of these people do not have the capacity to do that.⁵⁸
- 1.77 As previously mentioned, FCA were of the view that current provisions did not adequately protect Aboriginal and Torres Strait Islander consumers from unscrupulous salespeople.⁵⁹
- 1.78 CHOICE supports the submissions made by CALC and FCA to the Committee, and said that 'a well-structured Do Not Knock register may operate as a simple and effective way for consumers to protect themselves from door-to-door marketing'.⁶⁰
- 1.79 While advocating for the Bill to be passed, CUAC took a measured approach to existing provisions, and said that 'only time will tell if these initiatives result in an improvement in sales behaviour at the door and a lower level of consumer dissatisfaction with this form of activity'.⁶¹

Industry regulatory schemes

- 1.80 In addition to the ACL, various industry bodies have self regulatory schemes in place which set out the codes of practice for door to door salespeople operating within that industry sector. Energy retailers have a code of practice and will be subject to National Energy Retail Law, which is part of an energy customer framework that involves the transfer of current state and territory responsibilities to a single set of national energy laws, regulations and rules.
- 1.81 The national implementation process is ongoing, and provides additional consumer protections relating to energy marketing, including door to door sales. Under the national approach, energy retailers must observe no canvassing signs, such as Do Not Knock stickers, and must maintain a 'no

57 CALC, *Submission 5*, p. 6.

58 Mr Steve Georganas MP, *Committee Hansard*, Canberra, 23 August 2012, p. 4.

59 FCA, *Submission 9*, p. 2.

60 CHOICE, *Submission 18*, p. 2.

61 CUAC, *Submission 8*, p. 4.

- contact list' of consumers who do not wish to be contacted for marketing purposes. A range of remedies and penalties are provided for.⁶²
- 1.82 In January 2011, the energy industry sector has implemented a self regulatory Code of Practice relating to door to door sales.⁶³ Simply Energy explained that the introduction of the Code was in recognition that across the sector the customer experience with door to door marketing 'has not always been ideal'.⁶⁴
- 1.83 The Code of Practice imposes requirements on the registration, accreditation, recruitment, training, assessment and monitoring of sales agents. Agents must undergo ACL training and pass a test on the Energy Assured Limited Code of Practice.⁶⁵ Agents who are found to have ignored Do Not Knock stickers are deregistered, and not permitted to sell energy for five years. This penalty was described by the marketing and communications company Salmat as a 'powerful deterrent'.⁶⁶ Six agents have been deregistered to date.
- 1.84 Communications Alliance, the peak body for the telecommunications industry in Australia, considers self regulation to be 'efficient and practicable'.⁶⁷
- 1.85 Similarly, the direct marketing or direct selling industry has a Code of Practice which requires members to 'respect any consumer request not to be contacted regarding the possible supply of a product. A request could take any form and would include, for instance, a Do Not Knock sticker'.⁶⁸
- 1.86 The industry peak body, Direct Selling Association of Australia (DSAA), described how their members 'go out of their way to train and educate' distributors although it was conceded that door to door sales often has a transient workforce which makes ongoing training difficult.⁶⁹
- 1.87 However, CALC claimed that such training was ineffective, citing the ACCC's commissioned report that 'from a sample of 15 agents that were

62 ACCC, *Submission 16*, pp. 2-3.

63 Energy Assured Limited, *Submission 3*, p. 1.

64 Simply Energy, *Submission 15*, p. 1; Ms Anne Whitehouse, Chief Executive Officer, Energy Assured Limited, *Committee Hansard*, Canberra, 22 August 2012, p. 10.

65 Ms Anne Whitehouse, Chief Executive Officer, Energy Assured Limited, *Committee Hansard*, Canberra, 22 August 2012, p. 10.

66 Salmat, *Submission 4*, p. 5.

67 Mr John Stanton, Chief Executive Officer, Communications Alliance, *Committee Hansard*, Canberra, 22 August 2012, p. 14.

68 DSAA, *Submission 2*, p. 1.

69 Mr John Holloway, Executive Director, DSAA, *Committee Hansard*, Canberra, 22 August 2012, p. 17.

also interviewed, only two could recount the details of the ACL with any conviction'.⁷⁰

Costs, practical difficulties and effectiveness

- 1.88 The concept of a Do Not Knock Register is based on the existing Do Not Call Register, which was implemented in 2006.⁷¹ Mr Georganas MP's intention is for it to be added to the existing register, 'where the infrastructure and the structure is already up and running'.⁷²
- 1.89 The Office of the Australian Information Commissioner (OAIC) expressed support for the creation of a Do Not Knock Register and discussed how such a Register would operate under current and proposed amendments to Australia's privacy laws.
- 1.90 The OAIC noted that
- A Do Not Knock Register is likely to include registrations from a significant proportion of Australians, including individuals who choose not to list their address in public directories. The Register is therefore likely to be substantial and hold information that some individuals see as sensitive.
- It will therefore be important for the Registrar to handle personal information in the Register in accordance with Privacy Act requirements.⁷³
- 1.91 The application of current privacy laws to marketing calls is limited, however the OAIC noted that the first stage of reforms to the *Privacy Act 1988* (Cth) are currently under consideration by the Parliament.⁷⁴ The first stage of the planned reforms would see the introduction of Australian Privacy Principles (APPs). The proposed APP 7 prohibits direct marketing unless certain conditions are met relating to 'the type of information involved and how the entity obtained that information, ... [and] issues of consent, an individual's likely expectation, and opt-out mechanisms'.⁷⁵
- 1.92 In addition, the OAIC raises issues concerning the security of a Register which would be strengthened by 'mandatory data breach notification'.

70 Ms Catriona Lowe, Co-Chief Executive Officer, CALC, *Committee Hansard*, Canberra, 22 August 2012, p. 1.

71 *Do Not Call Register Act 2006* (Cth) s 2.

72 Mr Steve Georganas MP, *Committee Hansard*, Canberra, 23 August 2012, p. 4.

73 Office of the Australian Information Commissioner, *Submission 17*, p. 3.

74 See Privacy Amendment (Enhancing Privacy Protection) Bill 2012.

75 Office of the Australian Information Commissioner, *Submission 17*, p. 2.

The OAIC notes that there is 'no current mandatory requirement to report data breaches; however, the Australian Government will consider whether such an obligation should be created' in the second stage of privacy laws reforms yet to be introduced to the Parliament.⁷⁶

- 1.93 The Australian Privacy Foundation (APF) suggested that the Australian Communications Media Authority, who administers the Do Not Call Register, could administer a Do Not Knock Register.⁷⁷ However, the Do Not Knock Register is not directly analogous to the Do Not Call Register, and a seamless integration may not be possible.
- 1.94 Industry groups protested the lack of consultation.⁷⁸ In particular, they noted that the Bill has not undergone assessment under the principles of Council of Australian Governments' Principles of Best Practice Regulation.⁷⁹
- 1.95 Contrary to the Bill's Explanatory Memorandum, the Register would require funding to set up and administer. The Australian Treasury noted that the Do Not Call Register cost \$33.1 million to establish and expected that a Do Not Knock Register would have a similar budgetary impact.⁸⁰ Indeed, the Direct Selling Association of Australia protested the 'extraordinary' financial cost to implement the Register.⁸¹
- 1.96 The Do Not Knock Register would impose compliance costs. Businesses would need to monitor the Do Not Knock Register and check the Do Not Knock Register, as well as implementing training to ensure compliance with both the Do Not Knock Register and the ACL.⁸² Energy Assured Limited explained that 'energy retailers would need to wash several million households against the register every month'.⁸³ Salmat argued that these additional compliance burdens would be 'unrealistic and unworkable ... businesses may not have the resources or funding available to check the register.'⁸⁴ Communications Alliance estimated the

76 Office of the Australian Information Commissioner, *Submission 17*, pp. 3-4.

77 APF, *Submission 14*, p. 3.

78 Energy Assured Limited, *Submission 3*, p. 2; Alinta Energy, *Submission 10*, p. 2; Salmat, *Submission 4*, p. 4.

79 Energy Assured Limited, *Submission 3*, p. 2; DSAA, *Submission 2*, p. 2; Alinta Energy, *Submission 10*, p. 2.

80 Australian Treasury, *Submission 13*, p. 6.

81 Mr John Holloway, Executive Director, DSAA, *Committee Hansard*, Canberra, 22 August 2012, p. 19.

82 Salmat, *Submission 4*, p. 5.

83 Ms Anne Whitehouse, Chief Executive Officer, Energy Assured Limited, *Committee Hansard*, Canberra, 22 August 2012, p. 9.

84 Salmat, *Submission 4*, p. 5.

- compliance cost to the telecommunications industry would be 'in the multimillions'.⁸⁵
- 1.97 The Committee heard that the Do Not Knock Register would decrease competition in the energy industry, as energy companies would face additional barriers to consumer marketing.⁸⁶
- 1.98 The Committee received evidence that, if implemented, the Do Not Knock Register may encounter problems with its operation. People move house, creating the administrative requirement to deregister old occupants and reregister new ones. In contrast, for the existing Do Not Call Register 'a phone number ... can move with the resident, keeping the register reasonably up to date.'⁸⁷
- 1.99 Many details relating to the Register would need to be expanded. The Bill does not include details pertaining to everyday operation, for example, timeframes for the provision of information to industry and costs of access,⁸⁸ although these could be provided for in delegated legislation.
- 1.100 The Do Not Knock Register may be more difficult to administer than the Do Not Call Register. As Alinta Energy pointed out, the data set for addresses is larger than that of telephone numbers. Consequently, addresses have larger margins of error during inputting than telephone numbers.⁸⁹
- 1.101 The Australian Treasury suggested that community alarm over the issue was disproportionate to the small percentage of complaints received by the ACCC.⁹⁰
- 1.102 CALC challenged the isolated prevalence of unscrupulous door to door sales practices, stating that 'there appears to be much commonality in conduct ... that indicates training'.⁹¹
- 1.103 By contrast, the Committee received evidence that door to door salespeople are, on the whole, law abiding, and that 'rogue' salespeople were in the minority.⁹² Mr Holloway from the DSAA told the Committee that:
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85 Mr John Stanton, Chief Executive Officer, Communications Alliance, *Committee Hansard*, Canberra, 22 August 2012, p. 14.

86 Energy Assured Limited, *Submission 3*, p. 3; Alinta Energy, *Submission 10*, p. 3; Simply Energy, *Submission 15*, p. 1; Salmat, *Submission 4*, p. 6.

87 Salmat, *Submission 4*, p. 5.

88 DSAA, *Submission 2*, p. 3.

89 Alinta Energy, *Submission 10*, p. 3.

90 Australian Treasury, *Submission 13*, p. 2.

91 CALC, *Submission 5*, p. 5.

92 Ms Anne Whitehouse, Chief Executive Officer, Energy Assured Limited, *Committee Hansard*, Canberra, 22 August 2012, p. 8.

...the ACCC's own report provides that the problem is miniscule...the total number of sales or contacts that they estimate in the report at 1.3 million, they have identified roughly 895 complaints...Even if you triple, quadruple, ten times that number in terms of people who may be vulnerable and who may be affected, we are talking very small numbers.⁹³

- 1.104 Mr Hoenig from the DSAA made the point that, regardless of their prevalence, the Do Not Knock Register is unlikely to be effective in deterring such 'rogue' salespeople anyway. Mr Hoenig said that:

If you are a scam artist and you are looking to target vulnerable consumers, you are hardly likely to be checking a government register to check whether someone is on there or not.⁹⁴

Committee comment

- 1.105 The Committee notes the work of the ACCC in making unscrupulous door to door selling an enforcement priority, and commends the ACCC for developing a range of educational materials, including those targeted at vulnerable consumers.
- 1.106 The Committee commends the work of consumer advocacy groups in developing and promoting the Do Not Knock sticker, and particularly the education and counselling work that FCA conducts in Indigenous communities. The Committee encourages the continued and expanded promotion of the sticker, especially to vulnerable consumers. It looks forward to the outcome of the current court case concerning the Do Not Knock sticker.
- 1.107 The Committee notes the importance of door to door salespeople who are informed about the ACL and responsible in executing their obligations under the law. Recognising that industry bodies are already implementing and monitoring self regulation, it encourages the continuation of efforts to eradicate unscrupulous door to door sales practices.
- 1.108 The Committee expresses deep sympathy for the predicament of vulnerable consumers who are confronted with unscrupulous door to door selling practices. However, having examined the evidence and the options presented, the Committee considers that enforcement, educating

93 Mr John Holloway, Executive Director, DSAA, *Committee Hansard*, Canberra, 22 August 2012, p. 18.

94 Mr Daniel Hoenig, Director Policy, DSAA, *Committee Hansard*, Canberra, 22 August 2012, p. 17.

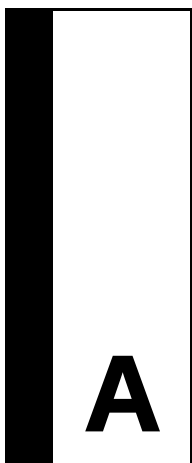
consumers about their ACL rights and continued promotion of the Do Not Knock sticker are the best options at this time to address the problem.

- 1.109 The Committee notes the evidence it received about the implementation of the Bill, and that several issues require further development and clarification prior to considering the establishment of a Do Not Knock register. The Committee notes that the privacy issues which would surround the compilation and maintenance of a Register, and that Australia's privacy laws are undergoing significant reform.
- 1.110 This Committee is providing an advisory report to the Parliament on the Privacy Amendment (Enhancing Privacy Protection) Bill 2012 and draws the attention of the House to the comments it makes on APP 7 and the commencement process of the reforms.
- 1.111 Noting reforms being considered regarding privacy laws, the recent implementation of the ACL, and that the adequacy of the regime is yet to be determined, the Committee concludes that further regulation at this stage is premature. Further regulation would only be merited if efforts to educate consumers about the ACL prove ineffective, and if courts decide that the Do Not Knock sticker does not amount to a request to leave.
- 1.112 If these two outcomes were to pass, the Committee considers that the review of the ACL in 2015 would be an appropriate forum to consider further regulation.

Recommendation 1

- 1.60 The Committee recommends that the House of Representatives not pass the Do Not Knock Register Bill 2012 at this time.**

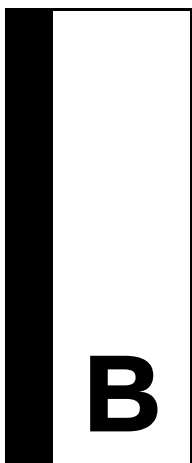
Graham Perrett MP
Chair



Appendix A – List of Submissions

- 1 Professor George Williams
- 2 Direct Selling Association of Australia
- 3 Energy Assured Limited
- 3a Energy Assured Limited
Supplementary Submission
- 4 Salmat
- 5 Consumer Action Law Centre
- 5a Consumer Action Law Centre
Supplementary Submission
- 6 Queensland Consumers Association
- 6a Queensland Consumers Association
Supplementary Submission
- 7 Communications Alliance Ltd
- 8 Consumer Utilities Advocacy Centre
- 9 Financial Counselling Australia
- 10 Alinta Energy
- 11 National Seniors Australia
- 12 Foxtel
- 13 Australian Treasury
- 14 Australian Privacy Foundation
- 15 Simply Energy

- 16 Australian Competition and Consumer Commission
- 17 Office of the Australian Information Commissioner
- 18 CHOICE



Appendix B – List of Witnesses Appearing at Public Hearings

Wednesday, 22 August 2012 - Canberra

Communications Alliance Ltd

Mr John Stanton, Chief Executive Officer

Consumer Action Law Centre

Mr Gerard Brody, Director, Policy and Campaigns

Ms Catriona Lowe, Co-Chief Executive Officer

Direct Selling Association of Australia

Mr Daniel Hoenig, Director of Policy

Mr John Holloway, Executive Director

Energy Assured Limited

Ms Anne Whitehouse, Chief Executive Officer

Financial Counselling Australia

Ms Fiona Guthrie, Executive Director

Thursday, 23 August 2012 - Canberra

House of Representatives

Mr Steve Georganas MP, Member for Hindmarsh

