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Dr Ian Holland
Secretary
Senate Environment Communications, Information Technology and the Arts Committee

Inquiry into the Do Not Call Register Bills 2006

Thank you for your invitation dated 26 May inviting a submission by today. We would like to firstly put on record our frustration at the increasingly ridiculous timescales for Committee Inquiries. All-volunteer organisations such as ours cannot realistically provide considered submissions in the time now allowed, and the efficacy of Inquiry processes must be in serious doubt as a result.

We welcome the proposal for a national Do Not Call Register as a long-overdue response to privacy intrusions which most Australians find unwelcome. The basic design of the scheme, based on the existing Spam Act regime, appears sound.

We made a detailed submission to the Departmental consultation, which I attach – we have not had time to review the Bills in detail to see if all our concerns have been addressed. However, we know that some have not, and we draw attention to the following major weaknesses in the scheme as proposed, many of which are shared with the Spam Act.

The exemptions are far too broad – many if not most of the unwelcome calls which are received will fall within one or other of the exemptions. There is no justification for the exemptions for political parties, charities and educational institutions – there are many other ways for these organisations to achieve their legitimate objectives without making unsolicited phone calls.

The exemption based on inferred consent through pre-existing business relationships is far too wide and will allow for many unwelcome calls purely on the basis that the consumer has made enquiries or had a minor dealings a long time ago. There is an obvious case for exempting current and substantive business relationships, but any such exemption should be much narrower.

We are disappointed that the opportunity has been missed to provide a variety of options for registration – technology should now allow for a more sophisticated approach to recording consumer preferences in a way that would also meet the needs of the organisations now given a crude exemption. Why should someone not be able to record ‘no commercial marketing or political calls’, but happy to receive charity fundraising and genuine market research calls (linked to industry bodies and codes, to avoid abuse)?

We note that the register will only be open to ‘private and domestic’ numbers, and that the government has expressly ruled out allowing small businesses to register. However, we point out that there is no legal definition of private and domestic number – only an indication in the Integrated Public Number Database (IPND) as to whether a public number is residential, business, government, charity or ‘not-known’. Individuals appear to be free to take advantage of ‘business’ rates and plans even if they are not in fact a business, and businesses can choose to use a ‘residential’ number. The application of the Bill to these different consumer choices is not clear and needs to be spelt out – preferably to leave the registration choice in the consumer’s hands, whether or not they are running a business.

Given that the Spam Act has not been extended to cover fax marketing, we see no reason why this should not now be picked up by this Bill which is the more ‘obvious’ home. The public will reasonably expect faxes to be covered by the new Register – unsolicited fax calls can be just as unwelcome and often more so as there is a direct cost to the recipient in consumables.

We do not see why registrations will expire after three years – arrangements could be made through the IPND for updating entries for numbers which change. There should be a default presumption that registrations remain in effect indefinitely unless an account holder withdraws or there is evidence that the number is no longer allocated to that individual.

Had we more time to review the Bills, we would probably have raised more points – I commend our submission to DOCITA (attached) to the Committee as flagging a wider range of issues.

Please direct queries about this submission to me.

Yours faithfully

Nigel Waters, Board Member and Policy Coordinator
Australian Privacy Foundation