

9 June 2006

Committee Secretary
Senate Environment, Communications, Information Technology and
the Arts Committee Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email: ecita.sen@aph.gov.au

Dear Sir,

SUBMISSION – SENATE INQUIRY INTO THE DO NOT CALL REGISTER BILL 2006

Thank you for the opportunity to provide our comments on the proposed *Do Not Call Register Bill 2006* (the Bill).

The NCUA is responsible for representing the interests of member credit unions to appropriate government departments, authorities and parliamentarians, as well as advising members of all appropriate legislative and related developments and requirements.

Credit unions are financial co-operatives, owned and controlled by their members. Credit Unions operate in the financial sector and generally provide financial advice, deal in deposit products such as savings accounts and term deposits, deal in non-cash payment facilities such as EFTPOS Cards and BPay, and general insurance. Credit unions are required to hold an Australian Financial Services Licence under the *Corporations Act* authorising these activities. Credit unions also undertake a banking business and offer loans, and as such are an Approved Deposit Taking Institution under the *Banking Act 1959*, and a lender under the *Uniform Consumer Credit Code*.

Although our members do not generally market to the public via the telephone, they do cross sell various financial products and services to existing customers. Accordingly we have an interest in ensuring that the Bill appropriately provides for such circumstances.

The “Opt Out” Option

The NCUA is supportive of the government’s efforts to establish a “do not call” register under the Bill. While some forms of direct marketing are acceptable to consumers, we believe that direct marketing by phone is intrusive and annoying for consumers, particularly where automated dialling equipment is used resulting in silent or recorded message calls.

We are pleased that the Bill implements an “opt out” approach as the preferred model for Australia. We believe that this approach strikes an appropriate balance between legitimate telemarketing businesses and the rights of individuals not to receive such calls.

Application of the Bill

We are also pleased to see that the Bill applies extra-territorially generally and specifically by ensuring that persons causing third parties to make telemarketing calls (whether by agreement or otherwise) are caught.

There is no doubt that the availability of cheaper human resources has resulted in a proliferation of call centres or telemarketing functions offshore. We believe that the provisions of the Bill will be effective in ensuring that local companies as well as those overseas companies, undertaking telemarketing functions on behalf of local companies, comply with the new regime.

Exemptions

It should be recognised that credit unions are mutual organisations, whereby the customers are the owners. Under ASIC policy statement PS147 and the *Corporations Act*, one of the fundamental tenants of mutuality is that the company is not run for the purpose of yielding a return to shareholders. On the contrary, many credit unions provide banking and other financial products to remoter regions of Australia, or service the specific needs of various groups based on ethnic origins, particular industries or geographical areas.

Although our members do not engage in direct marketing to the general public via the telephone, they often undertake direct marketing to existing members, who have generally indicated their consent to being contacted about other products of the credit union.

The inclusion of the concept of "consent" as an exemption to making "telemarketing calls" to persons on the "do not call" register (s.11(2) of the Bill) will provide our members with sufficient comfort to continue with contacting existing clients.

In situations where express consent has not been given, the concept of "inferred consent" is sufficiently wide to include such relationships. Although there may be doubt regarding whether consent can be reasonably inferred from the banking business relationship (pursuant to cl.2 of Schedule 2), the explanatory memorandum puts it beyond doubt. It specifically lists the relationship between a bank and the bank account holder as an example of an existing business relationship where consent to receiving telemarketing calls can be inferred.

We are disappointed that parliament has not adopted the generic description of Approved Deposit Taking Institutions or ADIs in the memorandum. There is no doubt that the concept of business relationship should extend to the relationship between a credit union and a member and we would request that the explanatory memorandum be amended by substituting the reference to a bank with ADI. Although we would have preferred that such established relationships be included as regulations, we are satisfied that the explanatory memorandum (once amended) makes it sufficiently clear.

We would be pleased to provide any further information required in relation to the matters addressed herein.

Yours sincerely,

National Credit Union Association Inc.



Philip Elliott
Chief Executive Officer