



SUBMISSION TO DEPARTMENT OF COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS

ON THE

Introduction of a Do Not Call Register – Possible Australian Model Discussion Paper October 2005

INTRODUCTION

A discussion paper canvassing options for a national, legislated Do Not Call register was released on 30 October 2005 by the Minister for Communications, Information Technology and the Arts.

The paper seeks comments from industry, consumer and community organisations, and members of the public on the possible establishment of a national register allowing Australians to opt-out of receiving telemarketing calls. Comments are also sought on other issues relevant to developing a comprehensive strategy to regulate telemarketing activities.

The Victorian and New South Wales Governments welcome this opportunity to provide input into the Commonwealth Government's deliberations on this important matter.

This submission outlines measures that the Victorian and New South Wales Governments have been undertaking to promote a do not call register. This submission also discusses measures to enhance consumer protections in telemarketing agreements in Victoria and New South Wales and the joint position of the Victorian and New South Wales Government regarding a do not call register.

BACKGROUND

On 25 August 2005, the New South Wales Minister for Fair Trading and the Victorian Minister for Consumer Affairs issued a joint media release calling on the Federal Government to meet its promise to introduce a national 'Do Not Contact' telemarketing register.

On 26 August 2005, the Victorian Minister for Consumer Affairs wrote to the Commonwealth Government noting that the cross-border nature of telemarketing required a national response to the issue and that in March 2005, the Federal Privacy Commissioner had recommended that the Commonwealth Government explore

options for establishing a national register and urging it to progress the development of a national register as a matter of urgency.

At its meeting on 2 September 2005, the Ministerial Council on Consumer Affairs considered a paper presented by New South Wales on Telemarketing – Establishment of a ‘Do Not Call’ Register.

On 19 October 2005, in accordance with a resolution of the Ministerial Council, the Chair of the Council, the Hon Dr Peter Toyne MLA, Northern Territory Minister for Justice and Attorney-General wrote to the Minister for Communications, Information Technology and the Arts expressing support for the establishment of a do not call register.

On 26 October 2005, the New South Wales Minister for Fair Trading and the Victorian Minister for Consumer Affairs established a joint hotline to allow consumers to register their support for a do not call register. Within 72 hours, over 8000 calls of support had been received.

THE DISCUSSION PAPER

The paper defines ‘telemarketing calls’ as being all unsolicited telephone calls from companies and organisations for both commercial purposes such as encouraging sales and non-commercial purposes such as research, encouraging charitable donations and providing information.

The paper states that there is a need for governments to find solutions that balance two important sets of rights: an individual’s right to privacy, and the rights of legitimate businesses and organisations to access the community for commercial and non-commercial reasons.

The paper notes that a national do not call register could:

- provide a more consistent and efficient operating environment for the telemarketing industry;
- allow people who do not wish to participate in telemarketing the opportunity to act proactively to avoid telemarketing calls; and
- establish an enforcement mechanism to deal with complaints about telemarketing.

JOINT NEW SOUTH WALES/VICTORIA SUBMISSION

New South Wales and Victoria support the establishment of an Australian do not call register under legislation to allow individuals to opt-out of receiving telemarketing calls.

A do not call register has benefits for both consumers and businesses. For consumers, it allows them to choose whether or not they wish to participate in telemarketing. Consumers who feel that telemarketing is intrusive can register, while those who are less concerned would not have to take any action. For businesses, it minimises the wasted effort and costs associated with contacting consumers who are not receptive to telemarketing.

The success of the recent New South Wales/Victoria telephone poll, where in four weeks over 20,000 people indicated their support for a do not call register, indicates that there is widespread support for such a register in the community. This reflects the support that similar measures have received overseas; in the United States alone, over 100 million numbers are now registered on their national do not call register.

In 2004, New South Wales and Victoria introduced legislation to regulate unsolicited telemarketing of goods and services over \$100 and provide enhanced consumer protections such as cooling off periods for contracts entered into as a result of telemarketing activities. These laws, made under the States' Fair Trading Acts, also impose restrictions on the hours that telemarketers may contact consumers.

While these regulations have been of benefit, it is clear that many consumers feel existing restrictions on contact hours are not sufficient. For example, many consumers have expressed sentiments that telemarketing during the evening between 5pm and 8 pm is particularly objectionable, yet if telemarketers were confined to the hours of 9am to 5 pm they would be unable to contact those who are at work during the day.

New South Wales and Victoria submit that a do not call register should comply with the following best practice outcomes:

1. The register should be created by statute and administered on an Australia-wide basis. The Australian Competition and Consumer Commission is the most appropriate body to administer the register, given the issue of telemarketing is an Australia-wide consumer protection matter and affects many industries. This would also be similar to the situation in the US, where the register is administered by the Federal Trade Commission, the general national consumer regulatory agency.
2. The register should apply to offshore telemarketers to the extent possible through Commonwealth extra-territorial legislation.
3. The register should be funded by industry and registration should be free for consumers.
4. Registration should be available to individual consumers and small businesses. All consumers should have access to a means of registering and for this reason, registration should not be dependent on internet access. A toll-free telephone number should be established to allow those people unable to access the internet to register.
5. The register should operate in such a way that individuals' registrations can be validated and abuse or manipulation of the database by telemarketers is prevented. Companies should be prevented from registering individual consumers to ensure that a do not call register is not used as a means to stifle competition in certain industries.
6. The register should apply to all unsolicited telemarketing calls, regardless of the technology used to make them.
7. A clear, consistent exemptions policy (which may provide for full, partial or no exemption) should be developed and published on the register with respect to:
 - a. established business relationships where consumers have opted-in to receiving calls;

- b. fundraising not associated with the sale of goods and services (other than goods or services that involve the sale of a ticket or share in a lottery or raffle); and
 - c. information provision and surveys not associated with the sale of goods and services.
- 8. The legislation which establishes the register should provide for:
 - a. Impartial and accessible complaint handling and dispute resolution procedures;
 - b. Effective compliance and enforcement procedures, including prosecution of both the call centre and the supplier on whose behalf the call is made in breach of the rules; and
 - c. Clear guidelines as to behaviour that may constitute a defence to alleged non-compliance.

In relation to point 7, it is considered that telemarketing on behalf of charities would be better received by consumers if a well-publicised 'do not call' scheme is in place to prevent or limit telemarketing by businesses. A possible outcome from such an arrangement is greater consumer tolerance and acceptance of telemarketing conducted by or on behalf of charities, potentially leading to an increased level of donations to charitable organisations.

As noted in the discussion paper, New South Wales and Victoria are currently considering options to harmonise the respective fair trading laws which regulate telemarketing in each State. All States and Territories have been invited to participate in the harmonisation process as the possible basis for nationally-consistent telemarketing regulation. New South Wales and Victoria therefore request that in order to avoid duplication of effort, the Commonwealth defers consideration of the proposal to impose minimum national contact standards on the telemarketing industry and exempt organisations until the harmonisation process is concluded.

New South Wales and Victoria note that the Standing Committee of Officials of Consumer Affairs has been asked to consider the issue of a do not call register, and urge the Commonwealth to work with the States and Territories to ensure that any national scheme for a do not call register is consistent with, and complementary to, existing state laws.

New South Wales and Victoria reiterate their support for a national do not call register and would welcome the opportunity to provide further input into its design and operation in the future.