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

Do Not Call Register Bill 2006

Westpac Banking Corporation (Westpac) appreciates the opportunity to make a submission to the Senate Environment, Communications, Information Technology and the Arts Committee inquiry into the *Do Not Call Register Bill 2006* (Bill).

While Westpac supports the introduction of a Do Not Call Register (DNCR), we believe that the Bill as currently drafted will present some unintended consequences for financial institutions. This submission explains our concerns and provides options for how they might be addressed.

We note that the Australian Bankers' Association (ABA) has also made a submission to the Committee. Westpac supports the ABA's submission.

The purpose of this submission is to explain some of our other concerns. We believe that most of our concerns would be addressed by deeming calls to existing customers 'designated telemarketing calls' and exempt from the prohibition on unsolicited telemarketing calls, similar to charities, government bodies etc.

Westpac contacts customers by telephone for different reasons. In addition to complying with our obligations under legislation, Westpac's telemarketers (and 3rd party contractors) do not call customers after 8pm on weekdays, 5pm on Saturdays and not at all on Sundays, unless specifically requested by the customer. When calls are made, staff clearly state where they are calling from and why and with each contact give the customer the opportunity to opt out or not record the conversation before continuing with the call.

1. Legal considerations

The ABA in its submission covers the raft of obligations and restrictions that financial institutions are subject to in making contact with their customers under Chapter 7 of the Corporations Act (FSRA), the Privacy Act, the Uniform Consumer Credit Code, the Trade Practices Act and the Australian Securities and Investments Act. We agree with the ABA's submission that the DNCR will unnecessarily burden groups in this industry by adding a

further layer of regulation which seems designed to capture marketers operating outside this existing 'opt out' framework.

1.1 'Reasonably inferred' consent

There is no clarity around what sort of conduct could be 'reasonably inferred' as consent. This would impose a major compliance issue for Westpac, as we would effectively be required on an individual basis to assess our customer base of approximately 8.75 million whether consent may be reasonably inferred, across a range of interactions with our customers over many years. In addition to the extra time and expense that we would incur in assessing whether consent may be inferred, introducing such a decision-making point into our processes would require us to design and implement an additional level of training for a significant number of our 27,000 employees to be able to make these determinations on a case by case basis.

Another issue centres around the evidentiary requirements for establishing whether consent may be 'reasonably inferred.' We do not know what would be required of us to demonstrate this requirement is met and to whom must it be demonstrated. We would also face significant IT costs if we were required to record our reasons for believing that there is inferred consent.

The uncertainty that stems from the requirement to ensure that consent may be reasonably inferred and the risk of exposure to the penalty provisions contained in the Bill effectively means that the only way of ensuring that we are able to telemarket to our customers without fear of breach would be to obtain express consent. As a result, the intention of the Bill to provide an exemption for existing customer relationships is defeated. There are other associated issues that would flow from having to obtain express consent from customers, including the fact that it is valid for a period of only 3 months. This would effectively introduce a requirement for us to seek consent to contact customers on a regular and ongoing basis. This would be very unwieldy and in fact may end up further exasperating the issue if we were forced to be in more frequent contact with our customers to confirm their consent.

1.2 Ongoing maintenance

As explained, our internal legal advice suggests that unless consent is expressed to be for a specified period or for an indefinite period, it is only applicable for a period of 3 months from the date the consent was given.

If this is not addressed adequately, we may find ourselves in a position of having to access the register on a daily basis as the 3 month consent 'anniversary' for each customer would fall on a unique day and therefore preclude us from running single mass 'washes' of our whole data base against the DNCR say, every quarter.

1.3 Distinction between telemarketing calls and service calls

The current wording of the Bill also leaves some room for interpreting what is considered a 'telemarketing' call and what would distinguish necessary service calls from telemarketing calls. We call our customers for a number of reasons, including reminders for renewing a term deposit. Other types of calls are more service calls such as calling a customer to verify unusual transactions on their credit card or to discuss a customer's loan/credit card servicing should an issue arise.

It is generally the scope of the ensuing conversation that will determine more clearly if the call is strictly service based, telemarketing based or a mix of the two. An example of the latter may be when a cross sell opportunity arises or when a customer becomes eligible for certain discounts or special offers that would deliver positive benefits that they would otherwise

would not know about. Also, customer surveys we made on behalf of Westpac by customer relations companies may also fall into the category of telemarketing activity under this proposed legislation when these activities clearly help us identify specific ways in which we can improve the quality of our financial services provision to our customers.

The Bill as it currently stands may impact on our ability to continue these activities which we believe provide a useful service to many of our customers.

2. Risk Considerations

The ABA submission has outlined some key concerns with regard to the current wording of the Bill and the adverse and onerous implications that will arise if it is introduced without significant review. Westpac wishes to raise the following additional issues.

2.1 Customer data security - IT

From an operational risk perspective, we have concerns around the security of our own customer data when transferring information for the 'wash' process against the DNCR. In addition to obligations under the Privacy Act, we have a duty of confidentiality to customers which may prevent us from disclosing customer information for the purpose of the 'wash.'

3. Commercial considerations

In addition to the legal and risk management issues raised above, there are also a number of commercial considerations we must take into account if it is to comply with the requirements proposed by the Bill. Those of initial concern are as follows:

3.1 Access costs

Clause 21 enables the Australian Communication and Media Authority (ACMA) to determine and collect fees for enabling telemarketers to access the DNCR for the purpose of 'washing' their own internal databases against that of the register. There are concerns that details of these costs, including when and how they will be levied, have not been provided.

We have already incurred substantial costs in ensuring that our systems comply with requirements under existing legislation, such as the Privacy Act, which gives customers the ability to opt-out of receiving telemarketing calls. In the circumstances, we believe that those who use the service should be required to pay a fee to supplement the cost.

3.2 Increased marketing costs

As the definition of telemarketing calls only extends to voice calls, it can be reasonably inferred that there will be an increased drive by industry to contact customers for marketing purposes via Direct Mail. This will add to the cost of advertising, which may be passed on to customers.

The use of Direct Mail would have a detrimental effect on the environment. Westpac prides itself on its environmental performance and is constantly striving to improve its efforts in this area. In 2005, we began looking at ways in which would could reduce the amount of paper sent to our customers. If the Bill is introduced in its present form, we may be forced to increase the amount of paper sent to customers.

3.3 Implementation costs

Aside from the costs of accessing the DNCR, the costs of implementing the back end requirements of the DNCR would be substantial. Westpac does not currently have the systems or resources in place to meet the proposed requirements. The capability to store a customer's registration on the DNCR, in addition to the current 'opt out' indicator already in place in our systems may require substantial IT investment as well as resourcing adjustments.

3.4 Opportunity costs

Of related concern is the fact that the proposal indicates the register will list household telephone numbers, rather than individual names for quarantine from contact. This approach would leave us to manage a process that would exclude more individuals than intended as the approach requires registration of the telephone number only, thus removing the ability of individuals to consent unless they are the account holder or nominated person. These lost marketing opportunities may arise as a result of more than one person having a number listed in the DNCR as their primary contact number or in the case of a sole trader who uses their residential number as their business contact number.

The approach is also problematic in the event that people move residences, as numbers will remain on the DCNR for a period of 3 years. This will prevent our ability to contact a number listed on the DCNR even if the original account holder has moved a number of years previously.

3.5 Third party providers and related costs

Westpac's use of third party marketers and third party marketers' contact lists to contact customers also needs to be addressed. Westpac must ensure that these third parties and /or the names they provide have met the requirements of the DNCR. This not only introduces an extra layer of due diligence Westpac must address when contracting with these service providers, but also would likely mean the increased compliance costs for these third parties may be passed to the bank in the form of higher fees charged for their marketing services. These increases would potentially be passed on to customers.

3.6 Commencement

We understand that the DNCR is to be in place by 2007. At present, we do not have the systems in place to meet the requirements of the Bill, even if the issues that we have raised are addressed.

We would need a period of at least 12 months in which to introduce the relevant systems and processes to meet the requirements contained in the Bill.

4. Recommendations

Westpac supports the introduction of a DCNR as we believe that it will address some community concerns with telemarketing. However, we believe that the Bill as drafted as present will present some unintended consequences for financial institutions, such as Westpac, who have legitimate purposes for contacting customers.

Westpac already adheres to its obligations under FSRA, Privacy law and other legislation. In addition to giving customers the ability to 'opt-out' of direct marketing, when customers are contacted our staff clearly state where they are calling from and why and with each contact, customers are given the opportunity to opt in or not proceed with the conversation at the outset.

Telemarketing calls made by, or on behalf of Westpac are not made after 8pm on weeknights, 5pm on Saturdays or at all on Sundays, unless the customer specifically requests to be called outside these hours.

4.1 Exemption for existing business relationships

Our main concern with the Bill lies with its proposed treatment of existing customer relationships. We believe that most of our concerns would be addressed by deeming calls to an existing customer base 'designated telemarketing calls' and therefore exempt from the prohibition on unsolicited telemarketing calls, similar to charities, government bodies etc.

4.2 Access costs

We have already incurred substantial costs in ensuring that our systems comply with requirements under other legislative instruments, including the Privacy Act, which already gives customers the ability to opt-out of receiving telemarketing calls.

To this end, we do not believe that all costs should be worn by business. We believe that those who use the service should be required to pay a subscription fee to supplement the cost.

4.3 Commencement

Even if our issues are addressed, we do not at present have the required systems in place to meet the requirements of the Bill.

We would need a period of at least 12 months in which to introduce the relevant systems and processes and would urge the Committee to consider this.

We trust these comments are of assistance to the Committee.

Yours sincerely,

Victoria Somlyay
Head of Government and Regulatory Affairs
Westpac Banking Corporation