

12 December 2017

The Manager
Unsolicited Communications Strategic Projects
Australian Communications and Media Authority
PO Box 13112
Law Courts
MELBOURNE VIC 8010

Dear Sir/Madam

Consultation on Potential for industry self-regulation of the Integrated Public Number Database, the Do Not Call Register and commercial electronic messages

Legal Aid NSW welcomes the opportunity to provide input to the Australian Communications and Media Authority's (**ACMA**) consultation concerning the potential for industry regulation of the Integrated Public Number Database, the Do Not Call Register (the **DNC Register**) and commercial electronic messages.

Background

The following comments are limited to the consideration of potential self-regulation of the DNC Register. The comments draw on the experience of Legal Aid NSW's solicitors working with vulnerable and disadvantaged clients in our Cooperative Legal Service Delivery Program (**CLSD**), the Civil Law Service for Aboriginal Communities and the consumer law team in our Civil Law Division.

Legal Aid NSW's **CLSD program** comprises 12 regional justice partnerships across regional and remote NSW. The Program aims to improve access to legal services for disadvantaged people in regional and remote NSW. Through grass roots engagement with local communities, the Program is well placed to identify emerging and systemic legal issues impacting adversely on disadvantaged groups. Public and private legal, non-legal, government and NGO agencies—including dispute resolution bodies such as the Telecommunications Industry Ombudsman—also participate in CLSD Program partnerships.

The Legal Aid NSW **Civil Law Division** focuses on legal problems that impact most on disadvantaged communities, such as credit, utilities, housing, employment, social security and access to essential social services. Consumer issues constitute the largest category service for this Division. Lawyers working in the Division's dedicated Civil Law Service for Aboriginal Communities (**CLSAC**) have observed the following as a result of the assistance they provide to Aboriginal clients in remote and rural NSW:

- Households in rural and remote areas are more likely to maintain a landline due to inconsistent or poor mobile phone reception.

- Limited financial literacy and other social and cultural factors can mean vulnerable Aboriginal consumers are susceptible to unfair sales tactics, particularly via telemarketing and door to door sales (see further below).
- The DNC Register is largely unknown and difficult to access due to limited access to the internet. Registration requires an email address which is not common for disadvantaged clients.
- Phone registration can be challenging for those who have a service that is limited to incoming calls.

As a result of these compounding difficulties, the CLSAC has assisted a number of people to be registered on the DNC Register.

Legal Aid NSW comments on industry self-regulation of the DNC Register

Legal Aid NSW strongly supports regulation and oversight of the DNC Register remaining with government. It should not be transferred to industry.

In our experience, the DNC Register provides an important safeguard for our disadvantaged and vulnerable clients, particularly those in regional and remote areas, against being signed up to unnecessary, inappropriate and unaffordable goods and services. Many of our clients find themselves overwhelmed and overpowered by aggressive and unconscionable sales practices undertaken through unsolicited phone calls. Our clients, particularly our Aboriginal clients, are often targeted and sold unsafe products that do not meet their needs and expose them to unmanageable debt.

As a result, our lawyers regularly provide advice and assistance to such clients who have been signed up by telemarketers, or who are vulnerable to being signed up by telemarketers to products including funeral insurance, solar panels and rent to buy schemes. By way of example:

- We recently assisted an Aboriginal man in Bourke, NSW. He suffers from bipolar disorder and suicidal ideation. He has no computer literacy or email address. He was contacted via landline by a telecommunications company telling him he was NBN ready and proposing that he sign up with them. The client mistakenly thought the caller was his existing provider, and agreed. When it transpired his property was not in fact NBN ready, the company still offered to provide him with his existing services, in preparation for the eventual switch. He agreed. He was subsequently assisted by a mental health support worker to contact Legal Aid NSW and we helped him cancel the second, duplicitous contract. Our client advised us that the experience of dealing with this company had caused him significant stress. He also told us that since the NBN has been introduced in the area, he has been receiving frequent phone calls from telecommunications companies. After assisting with the contract issued, we helped the client register with the DNC Register.
- One of our CLSAC solicitors recently assisted an Aboriginal man with cognitive impairment to sign up to the DNC Register after he was called by an energy marketer. The marketer signed him up to a new energy retailer, however his Centrepay deductions continued to be made to his existing provider. The client's account with the new provider was eventually disconnected due to lack of payments, while his arrears were being repaid to the original provider. This situation would have been prevented had he been on the DNC Register.

- Another solicitor recently assisted an elderly Aboriginal woman with limited computer literacy to sign up to the DNC Register, primarily to prevent funeral and life insurance companies from calling her.

Vulnerable individuals such as those in the above examples are unlikely to have the requisite capacity or awareness to register their dissatisfaction with the unsolicited caller or to take subsequent action to resolve their consumer disputes.

In this context, the DNC Register plays a vital role that goes beyond protection from inconvenience and intrusions on privacy. We are concerned that removal of the independent oversight of the DNC Register will weaken this role. In our view, the role of the DNC Register in protecting vulnerable people from unconscionable sales practices should be strengthened by increasing awareness of the Register and providing greater support for vulnerable people to access registration.

We are concerned that that consumer protection monitoring and compliance in the telecommunications industry may not have the same rigour as other sectors such as the banking and energy sectors. We consider that the DNC Register should remain independent of industry to ensure that disadvantaged and vulnerable consumers are adequately protected.

Finally, we note that ACMC is interested in views on how the regulatory response could best take into account evolving technological and market practices, noting that “for example, any increase in the prevalence of consent-based marketing may make the main DNCR safeguards less applicable.”¹ We do not agree that the increase of “consent-based marketing” provides a rationale to decrease regulation of telemarketing. We again point to the need for particular protections for disadvantaged and vulnerable consumers, in respect of whom “consent” may not be freely given, or given without appropriate prior information and knowledge.

For the above reasons, Legal Aid NSW’s view is that regulation and oversight of the DNC Register should remain with ACMA.

Thank you again for the opportunity to comment on the regulations. If you have any questions about our comments, the responsible officer within Legal Aid NSW is Harriet Ketley, Manager, Strategic Law Reform Unit, who can be contacted on 9219 5069 or harriet.ketley@legalaid.nsw.gov.au.

Yours sincerely



Brendan Thomas
Chief Executive Officer

¹ Consultation Paper, page 17