

Wednesday 7 December 2016

DNCR Project Officer
Australian Communications and Media Authority
Submitted via online form

Dear Australian Communications and Media Authority

RE: Remaking the Telemarketing and Research Industry Standard

I write regarding the consultation for the proposal to remake the Telemarketing and Research Industry Standard 2007 (the Standard). CHOICE acknowledges that this consultation is limited to reviewing the content of the Standard, rather than the operation of the Do Not Call Register Act as a whole. CHOICE feels that the issues consumers are experiencing with unwanted phone calls are likely to require legislative amendment outside the scope of this review. Nonetheless, these issues should be further explored in the context of this review.

In particular, CHOICE has recently called for changes to help consumers distinguish between volunteer fundraisers and third-party marketing companies acting on behalf of charities. While we raised this option in the ongoing review of the Australian Consumer Law by Consumer Affairs Australia and New Zealand (CAANZ), this could be approached through amending the Standard.

Fundraising activity, especially when conducted using aggressive sales tactics, can cause consumer harm. As charities increasingly adopt commercial practices, consumers are receiving fundraising requests that more closely mirror harmful high-pressure sales tactics – but, as the proposal to remake the Standard acknowledges, registered charities are exempt from the Do Not Call Register.

CHOICE has released research about the rate, nature and impact of unsolicited calls in Australia.¹ This focuses on fundraising through one of the three major channels used to solicit donations from people who have no established relationship with a charity (door-to-door, calling and on-street fundraising). Headline findings are that:

¹ CHOICE (2016), *Who's on the line? Unsolicited phone calls and the consumer experience*.

- Older Australians are most affected by unsolicited calls. 89% of people have received an unsolicited call in the last six months, this rises to 92% for 65-89 year olds.
- Fundraising calls are by far the most common kind of unsolicited call. Over 60% of people have received an unsolicited call from a charity, this rises to over 70% for 65-89 year olds.
- 25% of people receive an unwanted call on their landline from a charity each week. 5% receive unwanted calls on their landline from charities at least once a day.
- 55% of people agree that 'The callers use guilt to emotionally manipulate me into giving into their requests'.
- There is a possibility that third-party marketing organisations acting on behalf of multiple charities share information to target people most likely to donate, raising major privacy concerns. 67% of people who donated because of an unsolicited call noticed that they received more calls from others asking for donations.

Unsolicited calls cause clear consumer harm. The same reason to restrict aggressive unsolicited sales extends to unsolicited fundraising requests: it puts vulnerable people at risk of exploitation. Consumers are also unable to use telecommunications services as they wish due to constant calls. We have received reports from consumers who are not answering their phones, considering disconnecting services and even moving in with elderly relatives who need a phone but also need protection from frequent, aggressive, unwanted calls.

CHOICE supports amending the Standard to provide consumers with information on who is actually calling them and collecting funds – i.e., the name of the third party for-profit company that is working on behalf of the charity. Currently, it is extremely difficult for consumers to determine if they are being called by a volunteer for a charity, a charity employee or by a paid representative collecting funds for a third-party. The CAANZ review of the Australian Consumer Law has found that it is likely that a transaction between a third-party fundraiser fulfilling contractual obligations and a consumer could be captured by the consumer law. However, fundraising carried out by volunteers is unlikely to be regarded as in “trade or commerce” and so consumer law protections would not apply. This is why it is essential that fundraisers identify whether they are a volunteer, employee of a charity or working for a contractor for a charity. Consumers also deserve to be given information about who is collecting funds and how their money will be used, including how much of their donation will be directed to the charity through various donation channels.

CHOICE recommends amending the Standard so that this information must be provided on commencement of the call. We acknowledge that the Draft Standard 2017 appears to go some way towards addressing this issue, by expanding and clarifying the information to be provided on commencement of a call, but we are concerned that the reference to 'the company name or registered business name of the employer of the individual making the call' could be interpreted to mean 'the charity', rather than 'the charity and the third-party fundraising body'. Additionally, it is important for consumers to be provided with information on how their money will be used, and we recommend amending the Standard accordingly.

This would help eliminate some confusion, and enable consumers to make more informed decisions about donations. However, consumers need a way to control who can contact them and have the option to stop unsolicited approaches for money, especially in their own home.

CHOICE recommends that the Do Not Call Register be amended to allow consumers to opt-out of the type of request being made, rather than opt out of receiving calls from types of organisations. For example, consumers should be able to opt-out of all requests for money including fundraising and telemarketing. This would allow charities to continue to contact people to discuss matters of public importance or to request non-financial assistance.

CHOICE maintains that amending the Do Not Call Register Act would be the simplest way to address consumer harm caused by unsolicited fundraising calls. However, we would welcome an inquiry examining alternative approaches.

Charities perform a valuable function in society, providing advocacy, support and research services that otherwise may not be provided. Charities hold a special status in Australian society. They should be held to, at minimum, the same standards we expect of companies when it comes to treatment of consumers.

For further information please contact CHOICE on sagar@choice.com.au.

Yours sincerely,
Sarah Agar,
Manager of Consumer Policy