



**Australian Government**

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**Department of Broadband,  
Communications and the Digital Economy**

**Discussion paper:**

**Do Not Call Register Statutory Review**

**October 2009**

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# **1. Introduction**

The Do Not Call Register (the Register) was established in May 2007 under the *Do Not Call Register Act 2006* (the Act) in response to community concerns about unsolicited telemarketing calls.

The Register enables Australians to opt-out of receiving unsolicited commercial telemarketing calls by listing their fixed line, VOIP, satellite and mobile telephone numbers that are used or maintained exclusively or primarily for private or domestic purposes.

The Australian Government announced in the 2009–10 Budget that the Register will be extended to allow the registration of all telephone and fax numbers, including those used by businesses and emergency services. The changes will require legislative amendment to be implemented. Legislation to amend the Act is expected to be introduced into Parliament later this year, following further consultation with industry.

## **1.1 Statutory Review**

Section 45 of the Act requires a review of the legislation and the relevant provisions of the *Telecommunications Act 1997* (the Telecommunications Act) to be conducted before, or as soon as possible after, May 2010. Following the review, a report must be tabled in Parliament within 15 sitting days of the completion of the report.

The Department of Broadband, Communications and the Digital Economy (the Department) is seeking community views through this discussion paper to contribute to a review of the Register legislation and scheme.

This discussion paper considers the key elements under the Act and the key operational aspects of the scheme.

The statutory review will not consider the cost recovery arrangements that are currently in place, under which the telemarketing industry meets the full direct costs of operating the Register. This issue was addressed in a review of the policy underlying the cost recovery arrangements of the scheme that was undertaken in March 2008.

In addition, the statutory review will not consider the changes announced in the 2009–10 Budget to extend the scope of the Register to allow the registration of all telephone and fax numbers.

The Department will be undertaking industry consultation on the statutory review following the release of this discussion paper. These consultations will be undertaken in conjunction with consultation on the implementation of the extension of the Register to all telephone and fax numbers.

## **1.2 How to make a submission**

The Department is seeking views on the issues raised in this discussion paper to assist in providing advice to the Government regarding the Register. This paper is for consultation purposes only and does not represent current Government policy.

Questions are included in boxes throughout the paper to guide discussion. Respondents are invited to provide written submissions or comments to address these questions, or provide a more general response if preferred. For convenience, the full list of questions is provided at Attachment A.

Submissions must include the respondent's name, organisation (if relevant) and contact details. Submissions with no verifiable contact details will not be considered.

Respondents should be aware that submissions may be made publicly available, including on the Department's website ([www.dbcde.gov.au](http://www.dbcde.gov.au)). The Department reserves the right not to publish any submission, or part of a submission, which in the view of the Department contains potentially defamatory material, or where it considers it appropriate to do so for confidentiality or other reasons.

All submissions will be treated as non-confidential information unless the respondent specifically requests the submission, or a part of the submission, is kept confidential, and acceptable reasons accompany the request. Email disclaimers will not be considered sufficient confidentiality requests. Note that submissions or comments will generally be subject to the provisions of the *Freedom of Information Act 1982*.

The closing date for submissions is **5.00 pm 4 November 2009**.

### **Lodgment of submissions**

Submissions can be lodged in the following ways:

**Online:** [www.dbcde.gov.au/donotcall](http://www.dbcde.gov.au/donotcall)

**Email:** [DNC.consultation@dbcde.gov.au](mailto:DNC.consultation@dbcde.gov.au)

**Post:** The Director  
Consumer Policy and Privacy  
Department of Broadband, Communications and the  
Digital Economy  
GPO Box 2154  
CANBERRA ACT 2601

**Fax:** 02 6271 1780

Enquiries about issues raised in this paper may be directed by email to [DNC.consultation@dbcde.gov.au](mailto:DNC.consultation@dbcde.gov.au) or by telephone to Garry Croker, Director, Consumer Policy and Privacy on (02) 6271 1287.

## 2. Background to the Do Not Call Register

The *Do Not Call Register Act 2006* (the Act), requires the Australian Communications and Media Authority (ACMA) to establish and maintain a Do Not Call Register. The Register became operational in May 2007 and now has over 3.54 million telephone numbers registered<sup>1</sup>.

The key objectives of the Act are to:

- reduce the inconvenience and intrusiveness of telemarketing calls by enabling Australians to list their fixed line and/or mobile phone number that is used primarily or exclusively for private or domestic purposes on the Register
- provide a consistent and efficient operating environment for the telemarketing industry through a national scheme that requires that a telemarketer not call a number listed on the Register
- establish an effective complaints handling mechanism for consumers to report complaints about unsolicited and unwanted telemarketing calls.

Telemarketing is broadly defined in the Act. In general terms, the Act provides that a telemarketing call is a voice call made to a telephone number where the purpose or one of the purposes of the call is to:

- offer, supply, provide or advertise goods or services
- offer, supply, provide or advertise land or an interest in land
- offer, supply, provide or advertise a business opportunity or investment opportunity
- solicit donations.

The Act provides that the purpose of a call may be determined by the content and the presentational aspects of the call, or the content that can be obtained using the contact information mentioned in the call. Fax numbers are specifically excluded from being listed on the Register and fax communications are not covered by the definition of a telemarketing call.

ACMA is responsible for overseeing the operation of the Register, including education activities and enforcement. On 1 February 2007, ACMA contracted with Service Stream Solutions Pty Ltd (the Register Operator) to build and operate the Register until February 2011.

More information about the Register is available from [www.donotcall.gov.au](http://www.donotcall.gov.au) and on ACMA's website at [www.acma.gov.au/donotcall](http://www.acma.gov.au/donotcall).

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<sup>1</sup> Registrations between 3 May 2007 and 30 June 2009 according to the statistics published on the ACMA website at [www.acma.gov.au/donotcall](http://www.acma.gov.au/donotcall).

## 3. Key elements of the legislation and discussion of options

### 3.1 Opt-out

An objective of the *Do Not Call Register Act 2006* (the Act) is to reduce the number of unwanted or unsolicited telemarketing calls that individuals receive. The scheme is designed so that individuals who want to receive telemarketing calls can continue to do so by not listing their details on the Register.

The registration process for the Do Not Call Register is described in Part 3 of the Act.

The Act sets up an 'opt-out' scheme where individuals can choose not to receive telemarketing calls by listing their fixed and/or mobile telephone numbers on the Register.

The Act requires a proactive choice from individuals to list their numbers on the Register. The requirement for individuals to register their details has created strong consumer awareness of the scheme and how it operates. A survey on community attitudes to unsolicited communications, to be published by ACMA in October 2009, identified that approximately one in three Australian households (32 per cent) 'opted out' of receiving telemarketing calls between May 2007 and June 2009<sup>2</sup>. In addition, the survey identified that three in four Australians (75 per cent) are aware of the Do Not Call Register.

Further detail about the Register's operation is outlined in Section 4 of this paper.

### Alternative options

The current opt-out approach used by the scheme is operating well. An alternative to this process is an 'opt-in' scheme which would prohibit telemarketers from contacting all Australian telephone numbers covered by the scheme, unless individuals opt-in to receive telemarketing calls. An opt-in approach would have a significant adverse impact on organisations that rely on making telemarketing calls for their business activity, as the pool of telephone numbers available to contact would be greatly diminished.

#### *Questions*

3.1.1 Are there ways that the opt-out structure of the scheme could be improved?

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<sup>2</sup> In April 2009, ACMA commissioned Newspoll (an independent research company) to conduct a survey on community attitudes towards unsolicited telemarketing calls and electronic communications, and the awareness and effectiveness of the regimes that regulate these forms of communication. Newspoll conducted the survey during June 2009, randomly surveying over 1600 Australians, aged 18 years and over. The results of the survey will be released on ACMA's website in October 2009.

## **3.2 Consent**

A key concept underpinning the operation of the Act is ‘consent’. In Schedule 2 of the Act, consent is defined as ‘express consent’ and ‘inferred consent’.

‘Express consent’ is given when an individual provides their explicit permission to receive telemarketing calls. For example, an individual may consent to receive telemarketing calls when they purchase goods through an online service that provides an option to receive further marketing communications.

‘Inferred consent’ occurs when a telemarketer has reason to believe that an individual will be willing to receive a telemarketing call based on the conduct of the individual and the business or other relationship which already exists between the individual and the telemarketer.

Telemarketers are allowed to contact individuals who fit into either of the above two definitions of consent, even if they are listed on the Register.

### **Express consent**

Although express consent is not defined in the Act, it can include a range of situations in which an individual gives their consent to a telemarketer but may not be aware that they are doing so, such as through the terms and conditions of a contract.

The Act provides that express consent expires after three months, unless another period is specified. The Act also allows an indefinite time period if this is specified at the time when consent is given. A possible issue with indefinite express consent is that an individual may receive telemarketing calls some time after providing their consent. For example, an individual may complete a competition entry form which includes a consent provision that applies indefinitely, and receive telemarketing calls several months or even years later.

### **Inferred consent**

In the majority of cases, inferred consent operates where an individual is an existing or previous customer of an organisation. For example, an organisation may contact a customer who has purchased goods or services which involve an ongoing relationship, such as the purchase of a car with a three-year warranty from a car dealer. Generally, inferred consent would not apply when an individual makes a one-off purchase with no ongoing connection, such as when an individual purchases a t-shirt from a clothing store.

A possible issue with inferred consent is that the Act does not limit the organisation from calling its former customers. There is no limitation on how long a telemarketer may continue to contact a former customer. As with express consent, the individual would have to specifically withdraw their consent for receiving calls from the car dealer if these calls are unwanted.

### **Alternative options**

An option for addressing the issues with express consent includes defining the term ‘express consent’ to require a positive, clear and informed request from an individual to receive communications from an organisation. Limiting the express consent timeframe to

a maximum period, for example six months, after which express consent would no longer be valid is another option.

Similarly for inferred consent, a potential option to resolve the issue is limiting inferred consent to existing customers. This could be done by stating that when a relationship ends consent can no longer be inferred. Another option could involve limiting inferred consent to a particular period after a business or relationship ceases. For example, a telemarketer could be allowed to contact a former customer for a certain period after the relationship ends.

A possible option for improving clarity around the operation of both express and inferred consent would be to state in the Act that an individual may withdraw their consent from a specific organisation at any time, after which the telemarketer can no longer make calls to the person.

#### *Questions*

3.2.1 Are there ways that express consent could be improved?

3.2.2 Are there ways that inferred consent could be improved?

### **3.3 Registration period**

Under Section 17 of the Act registrations of telephone numbers remain in force for three years from the date of registration. This timeframe is intended to ensure that the information on the Register remains current, as individuals may move address or change numbers during this time.

The Register was established in May 2007 and the registrations from that month are due to expire in May 2010. ACMA is concerned that these individuals may not be aware that their registrations will expire. The Community Attitudes to Unsolicited Communications survey found that only one in four individuals (25 per cent) know that their registration is only valid for three years, and even fewer (15 per cent) are aware they can re-register for another three years at any time before the registration expires.

To address these concerns, ACMA is conducting an education initiative leading up to and surrounding May 2010 to inform registrants of the need to re-register. Further details are available in Section 4.4.

#### **Alternative options**

Other alternatives to a three-year expiry period include a longer registration period, such as five years, or making registrations open-ended.

Extending the registrations to a longer period or making them open-ended could lead to problems with the Register becoming 'clogged' with obsolete information. In addition, as numbers are reassigned there is the possibility that some individuals may have their telephone numbers listed on the Register without their knowledge. These problems would need to be addressed if any changes were made to the registration period.

*Questions*

3.3.1 Are there ways that the registration period could be improved?

### **3.4 Exemptions**

The Act allows classes of calls from organisations which are deemed to be in the public interest to be exempt from compliance with the Act. These are known as ‘designated telemarketing calls’ and are defined in Schedule 1. The exemptions include calls from government bodies, political parties and candidates, educational institutions, religious organisations, and charities or charitable institutions.

The Department has received a number of complaints from individuals who are unhappy about receiving calls from certain exempt organisations.

Although they are not subject to the provisions of the Act, exempt organisations are still required to operate under the provisions of the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* (see Section 4.5). In addition, the Fundraising Institute Australia (FIA) has created the *Professional Standard of Charitable Telemarketing Fundraising Practice* which sets out best practice requirements for organisations undertaking fundraising over the telephone, including charities. This standard requires members of the FIA to comply with certain practices when making telemarketing calls.

*Questions*

3.4.1 Are the current exemptions appropriate and relevant?

### **3.5 Research calls**

Calls intended for research purposes are not included under the definition of ‘telemarketing calls’ in the Act and are not otherwise referred to in the Act. Organisations are able to make calls seeking information, such as opinions on environmental concerns or to seek data for political polls, so long as there is no intent to market a product or service. However, there is a potential problem with dual purpose calls, where the caller makes a research call and then offers a free product at the end of the call, wrongly believing that, due to the research element, the call is permitted. A definition of a ‘research call’ in the Act may assist individuals and organisations to understand how these types of calls can be made.

*Questions*

3.5.1 Should ‘research calls’ be defined in the Act to clearly distinguish between calls with a commercial purpose and calls with a research purpose?

## **4. Operation of the Register**

ACMA is responsible for overseeing the operation of the Register, including:

- undertaking education and awareness initiatives to assist industry and individuals in understanding how the scheme operates
- investigating complaints about possible breaches of the Act and the Industry Standard
- taking enforcement action where appropriate.

ACMA also oversees the contract with Service Stream Solutions Pty Ltd (the Register Operator).

### **4.1 Registration process**

Between 3 May 2007 and 30 June 2009, over 3.54 million telephone numbers were listed on the Register<sup>3</sup>.

Listing a telephone number on the Register can be done online, by telephone or by completing an application form and posting it to the Register Operator. Registrations may take up to 30 days to become effective.

According to data provided by ACMA, approximately 83 per cent of registrations were completed online. Approximately 14 per cent of individuals registered over the telephone and three per cent registered by mail.

The vast majority (95 per cent) of respondents to the Community Attitudes to Unsolicited Communications survey commissioned by ACMA claimed the registration process was either 'very easy' or 'somewhat easy' (comprising 72 per cent saying it was 'very easy' and 24 per cent saying that it was 'somewhat easy'). For one per cent of respondents, however, the registration process was considered as 'not very easy'.

### **4.2 Number checking process**

Organisations that wish to make unsolicited telemarketing calls to Australian telephone numbers must not call numbers that are listed on the Register. Telemarketers submit a list of numbers they plan to call to the Register Operator to check or 'wash' against the Register. The Register Operator advises which of the numbers are on the Register, are not on the Register or are invalid numbers<sup>4</sup>. Depending on the size of the calling list submitted, this process generally takes less than a minute. By checking calling lists in this way, telemarketers cannot learn of new numbers (on the Register) that were not included in their contact lists in the first place.

Telemarketers obtain an annual subscription from the Register Operator for the amount of telephone numbers they intend to 'wash' over a period of up to 12 months. There is one subscription type that allows free washing of up to 500 telephone numbers per year.

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<sup>3</sup> According to the statistics published on the ACMA website at [www.acma.gov.au/donotcall](http://www.acma.gov.au/donotcall)

<sup>4</sup> 'Invalid numbers' are numbers of a type not eligible to be on the register. For example, smart numbers, 1300xx, 1800xx, 1900xx, or numbers that have been formatted incorrectly.

A telemarketing call list that has been through the washing process is valid for 30 days, after which the telemarketer must wash the list again to continue making telemarketing calls to those numbers. This enables numbers that have been registered in the last 30 days to be removed from their calling lists.

Between 25 May 2007 and 30 June 2009, over two billion telephone numbers had been submitted for washing against the Register. As at 30 June 2009 there were 2948 telemarketers registered to use the washing service<sup>5</sup>.

In July 2009, ACMA undertook a survey of telemarketers on the washing process<sup>6</sup>. A total of 180 responses were received. Approximately 72 per cent of respondents indicated that the washing process was either 'excellent' or 'good'. Approximately 79 per cent of respondents thought the turnaround times for the washing service were either 'excellent' or 'good'.

From 1 July 2008, the full direct costs of operating the Register are being recovered from industry through annual washing fees. ACMA undertakes annual cost recovery reviews to determine the washing fees for the following financial year, in line with the Australian Government Cost Recovery Guidelines.

#### *Questions*

4.2.1 Is the registration process effective and easy to use?

4.2.2 Is the washing process effective and easy to use?

4.2.3 Are there ways to improve either of these processes?

### **4.3 Compliance with the Act**

ACMA is responsible for investigating breaches of the Act and the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007*. ACMA can undertake a range of enforcement actions which can result in significant penalties being imposed.

ACMA has combined ongoing education and information activities with enforcement action against those businesses that fail to comply with the Act.

During the second year of operation there has been a 60 per cent drop in complaints about calls to numbers on the Register, indicating a significant improvement in compliance by telemarketers.

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<sup>5</sup> Data provided by ACMA. This figure does not include 757 inactive accounts created in the telemarketer access portal but not activated for use.

<sup>6</sup> The survey undertaken by the ACMA was of users of the washing system that have registered via the telemarketer access portal. The survey findings have not been released publicly.

## Complaint handling and investigations

ACMA's general approach to compliance is to seek to resolve a matter, where appropriate, without resorting to formal procedures.

A complaint can be lodged on the Register website or by telephone to the Register Operator. The Register Operator addresses any complaints that do not raise potential breaches of the legislation. Complaints that involve a potential breach of the Act or the Industry Standard are referred to ACMA. ACMA considers the complaint to determine if it appears to be a breach and writes to the consumer to advise them of the proposed action. ACMA generally issues an advisory letter to the relevant business, providing it with an opportunity to review its compliance processes and address the apparent issues. If further complaints are received, a more detailed warning letter is sent to the business.

From 31 May 2007 to 30 June 2009, 42 800 complaints were made to either ACMA or the Register Operator. The majority of these complaints raised potential breaches of the Act and/or the Industry Standard and were handled by ACMA.

ACMA has broad powers under the Telecommunications Act to investigate breaches of the Act and the Industry Standard. Where an informal approach to a business has not been effective in addressing any apparent compliance issues, ACMA may decide to undertake a formal investigation into the matter. ACMA will generally investigate a business where there has been a serious breach, multiple breaches or ongoing non-compliance. An investigation may involve obtaining call records, searching database records and seeking information from the parties involved.

To assist telemarketers to comply with the Do Not Call Register Act, ACMA has produced a range of information material including a compliance guide, which is discussed further at Section 4.4.

## Enforcement action

Following an investigation into an alleged breach of the Act or the Industry Standard, ACMA may decide to undertake enforcement action against the telemarketer. There are a number of enforcement options available to ACMA, which include:

- issuing a formal warning
- accepting enforceable undertakings
- issuing an infringement notice, which specifies a financial penalty (see Table 1)
- commencing proceedings in the Federal Court or Federal Magistrates Court, to seek injunctive relief and/or the imposition of financial penalties (see Table 2).

During the first two years of operation, ACMA issued eight formal warnings, accepted eight enforceable undertakings and collected more than \$300 000 in penalties from businesses that have called telephone numbers on the Register.

**Table 1—ACMA infringement notice penalties**

Calling a number on the Register	Other provisions
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<b>Body corporate</b>	\$2200 for single breach	\$1100 for single breach
	\$110 000 for 50 or more breaches	\$55 000 for 50 or more breaches
<b>Person other than body corporate</b>	\$440 for single breach	\$220 for single breach
	\$22 000 for 50 or more breaches	\$11 000 for 50 or more breaches

**Table 2— Court-ordered penalties**

	<b>Act</b>	<b>Industry Standard</b>
<b>Body corporate</b>	\$220 000 up to \$1.1 million	\$250 000
<b>Person other than body corporate</b>	\$44 000 up to \$220 000	\$50 000

The penalty imposed by a court may depend on the provision breached, whether the person that breached the provision is a body corporate or a person other than a body corporate, and whether the person has a prior record for breaching a civil penalty provision.

Further information about the enforcement of the Register is available at [www.acma.gov.au/donotcall](http://www.acma.gov.au/donotcall).

#### *Questions*

- 4.3.1 Are there ways that the complaints handling process could be improved?
- 4.3.2 Are the penalties in the Act appropriate and a sufficient deterrent?

## **4.4 Education and Awareness**

ACMA has undertaken a number of activities to educate individuals and industry about the Act and the operation of the Register. ACMA started the education campaign prior to the launch of the Register in 2007. The campaign was split into two streams, one for industry and another for individuals. Promotion of the Register through media releases and advertising was included in print, radio, television and industry specific media.

Since the Register’s inception, ACMA has continued its education activities and has developed a range of fact sheets for both individuals and industry. ACMA identified that the real estate industry required more detailed information to comply with the Act and developed an educational fact sheet specifically for that industry. ACMA has also released a web page specific to the real estate industry.

A survey of telemarketers conducted by ACMA in July 2009 indicated that approximately 60 per cent of respondents found the information on the Do Not Call website was 'useful' and approximately 46 per cent of respondents found the information on ACMA's website was 'useful'. Approximately 33 per cent of respondents 'never refer' to the information on the Do Not Call website and approximately 45 per cent 'never refer' to the information on ACMA's website.

On 14 July 2009 ACMA launched a compliance guide for industry including practical measures telemarketers can take to comply with the Act. The guide was developed in consultation with a broad cross-section of the telemarketing industry. The compliance guide has also drawn on knowledge gained from investigations that ACMA has conducted.

ACMA will launch another education and awareness activity in the lead up to and surrounding the expiration of the first registrations on the Register in May 2010. ACMA will be contacting those individuals who registered online and chose to receive a reminder email for their re-registration before their numbers expire. All registrants will need to re-register after a period of three years. See Section 3.3 for further discussion on the registration period.

ACMA's fact sheets and compliance guide are available at [www.acma.gov.au/donotcall](http://www.acma.gov.au/donotcall)

#### *Questions*

4.4.1 Do you have any comments on the education and awareness activities undertaken by ACMA?

4.4.2 Is information on the Register easy to find and understand?

### **4.5 Industry codes and standards**

The Telecommunications Act gives ACMA the power to develop national industry codes and standards that relate to the telemarketing industry.

Under the Telecommunications Act, ACMA was required to make an industry standard dealing with certain aspects of telemarketing. The *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* (the Industry Standard) commenced on 31 May 2007 and applies to all organisations making telemarketing calls and research calls, including exempt organisations. The Industry Standard directs when and how telemarketers and research callers can contact individuals, including:

- the times at which telemarketing and research calls cannot be made
- the information that must be provided by the caller including their name and business
- the termination of telemarketing and research calls
- the display and identification of the telephone number that is calling the recipient (known as caller line identification).

Industry codes and standards apply to businesses within the telemarketing industry, but not to those outside of the industry. This means that businesses that are engaging other businesses to make calls on their behalf are not bound by the Industry Standard.

There are additional areas that could be included in an industry code or standard to address issues identified with the scheme, including record keeping rules, internal do not call lists, silent calls, and harvesting of numbers.

In light of the Government's decision to expand the Register, ACMA will be undertaking a review of the Industry Standard.

### **Record keeping rules**

There is no specific requirement to keep records under the Act or the Industry Standard. However, it is in a telemarketer's best interests to keep records of calls they make, both to assist them in complying with the Industry Standard and also in responding to ACMA in the event of a complaint being made. This is a best practice guideline in ACMA's compliance guide. The survey of the washing process undertaken by ACMA in July 2009 indicated that approximately 66.3 per cent of respondents currently keep records on the outbound calls they make.

Telemarketers could be required to maintain records of the following:

- calls made or attempted (time, date and number called)
- the basis for making calls (such as consent)
- how the telephone number was obtained
- the length of the call
- the outcome of the call
- the product, campaign or client for which the call was made
- complaints received and the outcome
- requests for withdrawal of consent.

This would assist telemarketers to comply with the Act and identify any systemic issues as they arise. Record keeping rules would also reduce the likelihood of prohibited calls being made to numbers on the Register.

### **Internal do not call lists**

Internal do not call lists are included in the compliance guide released by ACMA as a best practice guideline. An internal list, where the telemarketer keeps a record of those individuals who do not wish to receive further calls, is a useful way to ensure individuals are no longer contacted.

The requirement to keep an internal do not call list could be included in an industry code or standard and apply to all call recipients, not only those who have listed their numbers on the Register. It could also apply to calls that are currently exempt under the Do Not Call Register Act. Telemarketers could be required to provide call recipients with the

option of being added to their internal do not call list and would be subject to a timeframe for processing the request.

### **Silent calls and missed call marketing**

In relation to telemarketing, a silent call is a telephone call that, when answered, results in silence over the telephone line. A missed call is a call that is unanswered and may result in the telephone number of the caller being displayed. These calls are usually generated through predictive dialing equipment that is used to call telephone numbers at random. The equipment calculates how long it will take for an operator to become available and dials telephone numbers in anticipation. If no operators are available, the predictive dialler may terminate the call leading to a missed call or silent call for the recipient.

Silent calls may cause concerns as some individuals may believe they are receiving harassing or threatening calls. It can also lead to frustration where there is no number to return the call because caller line identification (CLI) was not enabled (display of the telephone number that is calling the recipient) or the CLI number did not connect to a live operator.

Missed call marketing may also occur when a telemarketer makes a call but abandons the call after one ring. The recipient's telephone may indicate that a call was missed and display the telephone number of the caller. In returning the call the recipient will typically hear a recorded message in which goods and services are offered, advertised or promoted. Alternatively, the message may claim that the recipient has won a prize and must call a premium service number charged at a high rate. By returning the missed call, an individual is paying for the marketing call.

Schemes in other countries, including the United Kingdom and Canada, have rules about making silent calls, such as the abandonment rates, the information that must be provided via a recorded message if no operator can be connected, and the use of CLI. The FIA has a Professional Standard of Charitable Telemarketing Fundraising Practice which sets out requirements for the making of silent calls, including an abandonment rate of no more than five per cent in any 24-hour period.

Similar regulation of silent calls and missed calls could be introduced in Australia through an industry code or standard.

*Questions*

4.5.1 Should industry codes and standards apply to organisations outside of the telemarketing industry that are causing telemarketing calls to be made?

4.5.2 Should the process for making industry codes and standards be faster, more flexible and more responsive to community needs?

4.5.3 Should the Register scheme include additional rules requiring telemarketers to:

- keep records of their calls?
- keep internal do not call lists?
- limit the number and frequency of silent calls?

## **Conclusion**

The information provided during this consultation process will assist the Department to make recommendations to the Government on the future of the Do Not Call Register.

### *Questions*

5.1.1 Do you have any other comments or concerns about the Register?

## **Attachment A: Discussion questions**

### ***Key elements of the legislation***

- 3.1.1 Are there ways that the opt-out structure of the scheme could be improved?
- 3.2.1 Are there ways that express consent could be improved?
- 3.2.2 Are there ways that inferred consent could be improved?
- 3.3.1 Are there ways that the registration period could be improved?
- 3.4.1 Are the current exemptions appropriate and relevant?
- 3.5.1 Should 'research calls' be defined in the Act to clearly distinguish between calls with a commercial purpose and calls with a research purpose?

### ***Operation of the Register***

- 4.2.1 Is the registration process effective and easy to use?
- 4.2.2 Is the washing process effective and easy to use?
- 4.2.3 Are there ways to improve either of these processes?
- 4.3.1 Are there ways that the complaints handling process could be improved?
- 4.3.2 Are the penalties in the Act appropriate and a sufficient deterrent?
- 4.4.1 Do you have any comments on the education and awareness activities undertaken by ACMA?
- 4.4.2 Is information on the Register easy to find and understand?
- 4.5.1 Should industry codes and standards apply to organisations outside of the telemarketing industry that are causing telemarketing calls to be made?
- 4.5.2 Should the process for making industry codes and standards be faster, more flexible and more responsive to community needs?
- 4.5.3 Should the Register scheme include additional rules requiring telemarketers to:
  - keep records of their calls?
  - keep internal do not call lists?
  - limit the number and frequency of silent calls?
- 5.1.1 Do you have any other comments or concerns about the Register?

## Attachment B: Abbreviations

The following abbreviations are used in this discussion paper:

Act	<i>Do Not Call Register Act 2006</i>
ACMA	The Australian Communications and Media Authority
CLI	Caller line identification
Department	The Department of Broadband, Communications and the Digital Economy
FIA	Fundraising Institute Australia
Industry Standard	<i>Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007</i>
Minister	Minister for Broadband, Communications and the Digital Economy
Register	Do Not Call Register
Register Operator	Service Stream Solutions Pty Ltd
Telecommunications Act	<i>Telecommunications Act 1997</i>