



Australian Government

Office of the Privacy Commissioner

Research Calls on Sundays

Submission to the Australian Communications & Media Authority (ACMA)

May 2007

Office of the Privacy Commissioner

1. The Office of the Privacy Commissioner (the Office) is an independent statutory body whose purpose is to promote and protect privacy in Australia. The Office, established under the Privacy Act 1988 (Cth) (the Privacy Act), has responsibilities for the protection of individuals' personal information that is handled by Australian and ACT government agencies, and personal information held by all large private sector organisations, health service providers and some small businesses. The Office also has responsibilities under the Privacy Act in relation to credit worthiness information held by credit reporting agencies and credit providers, and personal tax file numbers used by individuals and organisations.

Background

2. The Office welcomes the opportunity to respond to the Australian Communications and Media Authority's (ACMA) Discussion Paper on *Consideration of whether to remove the prohibition on making Research Calls on Sundays* (the Discussion Paper)¹ relating to the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007.
3. In this Office's report *Getting in on the Act: The Review of the Private Sector Provisions of the Privacy Act 1988* (the Office's Private Sector Review), which was released on 18 May 2005, the Privacy Commissioner recommended that the Australian Government consider exploring options for establishing a national "Do Not Contact" register².
4. The Office subsequently made a submission to the Introduction of a Do Not Call Register: Possible Australian Model Discussion Paper (DNCR Discussion Paper) released by the Department of Communications, Information Technology and the Arts (DCITA) in December 2005 and to the inquiry into the provisions of the *Do Not Call Register Bill 2006* and the *Do Not Call Register (Consequential Amendments) Bill 2006* in June 2006³.
5. The Office has maintained an interest in the development of the Do Not Call Register (DNCR) including through responding to various discussion papers and draft instruments relating to the development of the DNCR, relevantly the discussion paper entitled *Industry Standard for the Making of Telemarketing Calls Discussion Paper* and the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) draft Industry Standard⁴.

¹ <http://www.acma.gov.au/webwr/assets/main/lib100844/trcdiscussionpaper+standardapril07.pdf>

² The Review Report is available on our website at <http://www.privacy.gov.au/act/review/index.html>. See Recommendation 25

³ Available from <http://www.privacy.gov.au/news/dncr.html>

⁴ Ibid

Key Privacy Messages

6. In the Private Sector Review, the Office identified that direct marketing remained a concern for many individuals, though in many cases the telemarketing phone calls that individuals received either complied with National Privacy Principle (NPP) 2.1 or were made by organisations that are not required to comply with the Privacy Act. In order to resolve these issues the Office recommended that the Australian Government establish a national Do Not Contact Register⁵.
7. The Office considers that the establishment of the DNCR is an important way for consumers to maintain some choice and control over how their information is used for marketing and will enable them to limit the number of intrusive and unsolicited calls they receive. It is therefore important that the exemptions allowed under the DNCR do not undermine the effectiveness of the Register.
8. The Office provided comments in relation to the proposal in the DNCR Discussion Paper to exempt certain types of organisations that had a public interest function. Included in this list were market researchers conducting social research. The Office recommended that rather than creating exemptions in the DNCR for particular types of organisations, exemptions should be based on the purpose of the telephone call⁶. The Office notes that the *Do Not Call Register Act 2006* (DNCR Act) took up this recommendation by expressly defining what constituted a “designated marketing call” in relation to calls made by exempt organisations.
9. The *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* (the Standard) complements the requirements of the DNCR Act by imposing minimum obligations for telemarketers and researchers in relation to their calling behaviour. Further, by preventing unsolicited calls on Sundays, the Standard seeks to, as far as is possible, limit the intrusiveness of such calls.
10. The Office submits that community expectations about how and when they receive unsolicited social research calls, as opposed to telemarketing calls, is an important consideration in assessing the proposal to allow research calls on Sundays.

Research

11. The Office recognises that research plays an important role in the economic and social development of Australia. The knowledge gained through some of this research informs government policy and initiatives and enables government agencies and organisations to plan for the human and capital resources required to deliver on these outcomes. Further, reliable research data has been shown to improve the ability of

⁵ See n 1

⁶ Submission by the Office of the Privacy Commissioner to DCITA, *Introduction of a Do Not Call Register Possible Australian Model: Discussion Paper*, December 2005, p9

community stakeholders to make informed decisions that can deliver benefits to individuals and the Australian community as a whole⁷.

12. Notwithstanding the public benefits that can be achieved through the availability of research data, inevitably some individuals would prefer not to receive any unsolicited calls. It is not clear if any resulting frustration would be exacerbated for all individuals by allowing research calls to be made on Sundays. However, this is likely to be the case for some individuals.
13. The Office is aware that some US based research companies found that the introduction of the US Do Not Call Registry in 2003 improved the likelihood of individuals responding positively to research calls. The report attributed this in part to the fact that individuals were less likely to simply hang up on all unsolicited callers because they were no longer receiving unwanted telemarketing calls. Further, it was claimed, this also freed up time for individuals to participate in research surveys⁸.
14. On this basis, it is possible that Australian consumers may be less frustrated by the number of calls they receive and may respond positively to participating in research surveys.
15. The Office suggests that in terms of research, individuals may be more concerned about how their information is being used rather than the unsolicited contact. Therefore it is encouraging that certain sections of the research industry have worked with our Office to develop Codes, Standards and Guidelines that balance the protection of personal information with the public and individual benefit that can be achieved through research⁹.
16. The current regulatory framework that exists for these research activities provides individuals with a degree of assurance that their personal information will not be misused. The Office is strongly supportive of the research activities undertaken by such organisations and their commitment to maintaining the protection and choice individuals have over the use of their personal information.

⁷ New Knowledge, New Opportunities A Discussion Paper on Higher Education Research and Research Training, The Hon Dr David Kemp, June 1999, <http://www.dest.gov.au/archive/highered/otherpub/greenpaper/contents.htm>,

⁸ "Has the Do Not Call Registry Turned Out To Be a Survey Researcher's Best Friend?", Rob Farbman, Edison Media Research, http://www.edisonresearch.com/home/archives/2005/07/has_the_do_not.php, accessed 17 May 2007

⁹ *Market and Social Research Privacy Code*, Association of Market and Social Research Organisations (AMSRO), see <http://www.privacy.gov.au/business/codes/index.html> and www.amro.com.au, Section 95 and 95A Guidelines introduced by the National Health and Medical Research Council (NHMRC) and approved by the Privacy Commission, see <http://www.privacy.gov.au/health/guidelines/index.html> and www.nhmrc.gov.au. Accessed 21 May 2007.

Considerations for ACMA

17. While the Office is aware that individuals value their privacy at home and generally consider unsolicited telephone calls intrusive and annoying, it is also the case that the community generally appreciates that quality research is vital to well informed decision making and delivering economic and social initiatives.
18. The Office is encouraged by the level of compliance and self regulation that currently exists within the research industry. We suggest that ACMA's decision to allow research calls on Sundays should be guided by the strength of public interest that lies in the community being able to access the benefits delivered by well structured research balanced against the community expectations in relation to unsolicited research calls.