



Consideration of whether to remove the prohibition on making Research Calls on Sundays

Telecommunications (Do Not Call Register)
(Telemarketing and Research Calls) Industry
Standard 2007

April 2007

Discussion Paper

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1. Introduction

1.1 On 4 April 2007, the Australian Communications and Media Authority (ACMA) was directed by the Minister for Communications, Information Technology and the Arts to consider varying the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* (the Industry Standard) to allow research calls to be made on a Sunday between certain hours. The Minister has advised that it has come to her attention that prohibiting research calls on a Sunday under the Industry Standard could detrimentally affect research activities.

1.2 Currently, under the Industry Standard all telemarketing and research calls are prohibited from being made at any time on a Sunday. The Industry Standard is required to commence at the same time as Part 2 of the *Do Not Call Register Act 2006*, expected to be on 31 May 2007.

1.3 This discussion paper invites comment from interested parties, and the submission of data and other evidence to assist ACMA in its consideration as to whether it should vary the Industry Standard to allow research calls to be made on a Sunday between certain hours.

1.4 This discussion paper should be read in conjunction with the *Australian Communications and Media Authority (Telemarketing Industry Standard) Direction No. 1 of 2007* and the Industry Standard (including their accompanying Explanatory Statements). These legislative instruments are available at www.comlaw.gov.au.

2. Submissions to ACMA

2.1 Submissions on the issues raised in this discussion paper may be made to ACMA as follows:

By email: donotcalltaskforce@acma.gov.au

By mail: Executive Manager
Converging Services Branch
Australian Communications and Media Authority
PO Box 13112 Law Courts
Melbourne Vic 8010

2.2 ACMA would prefer submissions to be sent by email wherever possible.

2.3 The closing date for submissions is the close of business, **Monday 21 May 2007**.

2.4 All submissions must clearly identify:

- the name of the party making the submission;
- the organisation or interest group represented by the submission (where relevant); and
- contact details—including telephone number, facsimile number, postal address and email address (if available).

PUBLICATION OF SUBMISSIONS

2.5 In general, ACMA publishes all submissions it receives.

2.6 ACMA prefers to receive submissions which are not claimed to be confidential. However, ACMA accepts that a submitter may sometimes wish to provide information in confidence. In

these circumstances, submitters are asked to identify the material over which confidentiality is claimed and provide a written explanation for confidentiality claims.

2.7 ACMA will consider each claim for confidentiality on a case by case basis. If ACMA accepts a confidentiality claim, it will not publish the confidential information unless required to do so by law.

When can ACMA be required by law to release information?

2.8 Any submissions provided to ACMA may be released under the *Freedom of Information Act 1982*. ACMA may also be required to release submissions for other reasons including for the purpose of parliamentary processes or where otherwise required by law (for example a court subpoena). While ACMA seeks to consult submitters of confidential information before that information is provided to another body or agency, ACMA cannot guarantee that confidential information will not be released through these or other legal means.

2.9 Please direct enquiries about this discussion paper to ACMA on (03) 9963 6800.

TIMING

2.10 The indicative timing for this work is:

Activity	Indicative timing
Release discussion paper	20 April 2007
Consultation with interested parties on discussion paper	April/May
Close of comment – discussion paper	21 May 2007
If Authority agrees to vary the Standard, the variation would commence	31 May 2007

3. Consultation

3.1 When varying the Industry Standard under Part 6 of the *Telecommunications Act 1997* (the *Telecommunications Act*), ACMA must consult with:

- any relevant industry body or association;
- the general public;
- the Australian Competition and Consumer Commission;
- the Privacy Commissioner, where the standard relates to certain privacy matters;
- at least one consumer body or association; and
- the States and Territories.

3.2 ACMA's consideration of whether to vary the Industry Standard under the Direction will be guided by the views put forward by interested parties.

3.3 The Industry Standard is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, meaning that it, and any variation to it, must be submitted for registration on the Federal Register of Legislative Instruments and is subject to parliamentary disallowance.

4. Background

4.1 The ACMA is responsible for the setting of telemarketing and research calling standards and establishing the Do Not Call Register on which people can register their telephone numbers to enable them to opt out of receiving unsolicited telemarketing calls.

THE INDUSTRY STANDARD

4.2 On 22 March 2007, the ACMA made the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007*. The Industry Standard establishes minimum standards that are aimed at providing greater certainty for consumers on the minimum level of conduct they can expect from those making unsolicited telemarketing and research calls.

4.3 The Industry Standard applies to:

- all telemarketing calls made to an Australian number to offer, advertise or promote goods, services, interests in land, business opportunities or investments, or to solicit donations;
- all research calls to conduct opinion polling and to carry out standard questionnaire-based research; and
- calls made for the above purposes by organisations exempt from the general prohibition on calling numbers listed on the Do Not Call Register, such as charities, registered political parties, and religious organisations.

4.4 The Industry Standard will complement the Do Not Call Register being established under the Do Not Call Register legislation. The Do Not Call Register is a database where individuals will be able to list their Australian fixed line and mobile telephone numbers that are used for private or domestic purposes. Generally, it will be against the law to make unsolicited telemarketing calls to a number listed on the Do Not Call Register. This is subject to some limited exemptions which will allow certain public interest organisations (such as charities and educational institutions) to make specific types of telemarketing calls to numbers on the Register. The Register is due to commence operation in May 2007.

4.5 Information about the level of community concern that gave rise to the Do Not Call Register legislation and the telemarketing and research call industry standard is contained in the Explanatory Memorandum to the Do Not Call Register Bill 2006.

What is a research call under the Industry Standard?

4.6 A research call under the Industry Standard is defined as meaning a call described in paragraph (b) of the definition of a telemarketing call in section 7 of the Telecommunications Act. Generally speaking, a research call is a voice call where the purpose or one of the purposes is to conduct opinion polling or to carry out standard questionnaire-based research.

4.7 Standard questionnaire-based research is defined in section 7 of the Telecommunications Act as research involving people being asked to answer one or more standard questions and would include, for example, a call surveying individuals on their attitude to law and order priorities in a community for the purposes of determining an appropriate education campaign.

4.8 Unlike telemarketing calls of a commercial nature, research calls are not captured under the Do Not Call Register Act and will not be subject to the requirements of the Do Not Call Register.

MINISTERIAL DIRECTION TO CONSIDER ALLOWING RESEARCH CALLS ON SUNDAYS

4.9 On 4 April 2007, the Minister for Communications, Information Technology and the Arts directed ACMA to consider whether to exercise its power under section 130 of the Telecommunications Act to vary the Industry Standard so as to:

- (a) remove the prohibition on making, or attempting to make, a research call at any time on a Sunday; and
- (b) include a prohibition on making, or attempting to make, a research call on a Sunday at the same times as a research call is prohibited on a Saturday.

4.10 Under section 130 of the Telecommunications Act, ACMA may, by written instrument vary an industry standard...if it is satisfied that it is necessary or convenient to do so to:

- (a) provide appropriate community safeguards in relation to one or more matters relating to the ...telemarketing activities...of those participants; and
- (b) otherwise regulate adequately those participants in relation to one or more matters relating to ...the telemarketing activities...of those participants.

COMMENCEMENT OF ANY VARIATION

4.11 Subsection 4(3) of the Direction requires that if ACMA varies the Industry Standard as a result of the Direction, the variation must commence at the same time as Part 2 of the Do Not Call Register Act. This will ensure that the varied permitted calling hours for research calls commence at the same time as the other provisions in the Industry Standard. As stated previously, Part 2 of the Do Not Call Register Act is expected to commence on 31 May 2007.

5. Issues to be considered in varying the Industry Standard under the Direction

5.1 ACMA is required to consider whether to vary the Industry Standard so as to (see subparagraph 4(1)(a) and (b) of the Direction):

- (a) remove the prohibition on making, or attempting to make, a research call at any time on a Sunday; and
- (b) include a prohibition on making, or attempting to make, a research call on a Sunday at the same times as a research call is prohibited on a Saturday, that is before 9 am and after 5 pm, as provided for in paragraphs 5(2)(c) and (d) of the standard.

5.2 Under the Industry Standard a caller must not make or attempt to make a call on:

- a Saturday before 9 am or after 5 pm;
- a Sunday or national public holidays;
- for research calls a weekday before 9 am or after 8.30 pm; and
- for other telemarketing calls, a weekday before 9 am or after 8 pm.

5.3 There is an exception to the rules where consent has been given by the call recipient in advance to receive the call during the prohibited calling hours.

5.4 Where more stringent calling hour restrictions apply under a state or territory law, then that more stringent law will continue to apply. ACMA understands that there are no state or territory laws that regulate calling hours for research calls.

5.5 In considering whether to vary the Industry Standard, ACMA will also have regard to the impact such a variation would have on the overall application of the Industry Standard in delivering appropriate consumer safeguards.

Matters ACMA must have regard to when considering issues raised in the Direction

5.6 ACMA is required under the Direction to have regard to the following matters in considering whether to vary the Industry Standard to allow research calls at certain times on a Sunday:

- (a) the important public benefit derived from accurate and high-quality research; and
- (b) the likely impact that prohibiting research calls on Sundays would have on the collection of accurate and high-quality research.

5.7 ACMA is not limited to considering the above two matters when deciding whether to exercise its power to vary the standard under section 130 of the Telecommunications Act. Hence ACMA is seeking information from industry on the costs to business and any other matters submitters believe should be taken into account in considering a variation to the prohibition on research calls being made on a Sunday.

5.8 In regard to considering public benefits derived from accurate and high quality research, the Explanatory Statement to the Direction states that issues such as the value of research as an important policy and planning tool for public and private sector bodies and the benefit to Australia's scientific excellence should be taken into account.

5.9 ACMA will also consider the public benefit of maintaining the current prohibition. This may include, but would not be limited to, consumer concerns about the inconvenience or intrusiveness of receiving unsolicited research calls on Sundays.

5.10 The Explanatory Statement to the Direction also provides some explanation of the issues that ACMA should take into account when considering the likely impact of prohibiting research calls on a Sunday. These include the magnitude of any resulting increase in cost, data collection time or potential bias, the impact this would have on the accuracy and quality of research and the likelihood that this could undermine the value of some research. The negative impact on longitudinal studies where data has previously been collected on Sundays and that specific demographic groups would be under represented as a result of the prohibition of making research calls on Sundays is also noted in the Explanatory Statement to the Direction.

6. Invitation to comment

Comment is invited on whether ACMA should vary the Industry Standard so as to:

- (a) remove the prohibition on making, or attempting to make, a research call at any time on a Sunday; and
- (b) include a prohibition on making, or attempting to make, a research call on a Sunday at the same times as a research call is prohibited on a Saturday, that is before 9 am and after 5 pm, as provided for in paragraphs 5(2)(c) and (d) of the Industry Standard.

ACMA would ask all submitters to provide reasons behind any views expressed in (a) and (b) above.

In light of the Minister's direction, submitters advocating the removal of the prohibition on making or attempting to make, a research call at any time on a Sunday should:

- provide examples, data sets and time series to identify the likely impact that prohibiting research calls at any time on a Sunday would have on the collection of accurate and high-quality research;
- provide information on the other impacts to businesses who may be prohibited from collecting research information by telephone on a Sunday; and
- outline the public benefit that would be derived from varying the Industry Standard to allow research calls to be made or attempted to be made between 9 am on 5 pm on a Sunday.

ACMA would need to be provided with information by industry participants that validated concerns raised with the Minister that prohibiting the making of research calls at any time on a Sunday could detrimentally affect research activities. Industry associations and their members are encouraged to respond to the discussion paper.

Submitters advocating maintaining the prohibition on making or attempting to make, a research call at any time on a Sunday should, as a minimum:

- outline the public benefit that would be derived from maintaining the prohibition; and
- outline the effect that removing the prohibition would have on the overall operation of the Industry Standard in delivering appropriate consumer safeguards.

It would also be useful to provide quantitative or other evidence that would provide objective evidence in support of any claims along these lines.

Comment is invited on:

- (c) any other issues submitters believe ACMA should take into account when considering whether to vary the Industry Standard to allow research calls to be made or attempted to be made between 9 am and 5 pm on a Sunday.

If ACMA agrees to vary the Industry Standard to allow research calls on a Sunday between 9 am and 5 pm, an instrument varying the standard would need to be made by ACMA under section 130 of the Telecommunications Act. Before varying the Industry Standard, ACMA is required to give interested persons 30 days to comment on the draft variation. A draft variation has been prepared in the event that ACMA agrees to vary the standard following industry consultation on this discussion paper. Importantly, the variation would only be made by ACMA should ACMA agree to vary the Industry Standard following consultation on this discussion paper.

Comment is invited on:

- (d) the attached draft *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard Variation 2007*. It should be noted that any move by ACMA to make this variation will be guided by responses to this discussion paper.



Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard Variation 2007 (No.)

Telecommunications Act 1997

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this Variation under subsection 130 (1) of the *Telecommunications Act 1997*.

Dated 2007

Chair

Deputy Chair

[DRAFT ONLY — NOT FOR SIGNATURE]
Australian Communications and Media Authority

1 Name of Variation

This Variation is the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard Variation 2007 (No.)*.

2 Commencement

This Variation commences at the same time as Part 2 of the *Do Not Call Register Act 2006* commences.

DRAFT ONLY

**3 Variation of *Telecommunications (Do Not Call Register)*
*(Telemarketing and Research Calls) Industry Standard 2007***

Schedule 1 varies the *Telecommunications (Do Not Call Register)*
(Telemarketing and Research Calls) Industry Standard 2007.

Schedule 1 Variation

(section 3)

[1] Paragraph 5 (2) (e)

substitute

(e) a Sunday before 9am; or

(f) a Sunday after 5pm.