Optimal period of Registration on the Do Not Call Register

Submission by the Australian Communications Consumer Action Network to the Department of Communications

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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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# Response to the ‘Optimal period of Registration on the Do Not Call Register’

ACCAN thanks the Department for the opportunity to contribute to its Do Not Call Register Consultation. We believe the Register has been an important tool in protecting consumers from receiving unsolicited telemarketing calls and faxes. However, with approximately 9 million registered numbers and on average approximately 1 million new numbers registered every year, we believe it is time to redesign the Register and align it with the *Spam Act 2003* (Spam Act).[[1]](#footnote-1)

The preference of the majority of Australians to not be contacted by telemarketers is evident in the high number of registrations and only 2 per cent of survey respondents indicating they enjoy receiving unsolicited marketing information.[[2]](#footnote-2) These figures are indicative of a public which places great importance on the privacy of its phone numbers and has little interest in them being used for general marketing purposes. As such, we believe it is an opportune time to shift from an opt-out to an opt-in scheme for receiving telemarketing.

1. Redesign the Register to align it with the *Spam Act 2003*

## Costs and savings of aligning with the *Spam Act 2003*

### The consumer – costs

In the 2010 review of the Register the Association for Data-Driven Marketing and Advertising (ADMA) was quoted as saying the cost to consumers of curtailing telemarketing will result in a “decline in market efficiency due to reduction of competition, information and innovation”.[[3]](#footnote-3) In addition consumers will “miss out on offers that help them save money”.[[4]](#footnote-4) Although these claims have not been substantiated, ACCAN would like to respond to them in turn.

We agree market efficiency is best achieved in situations where there is adequate competition, clear information and room for innovative practices. However we believe a curtailment of telemarketing practices may actually improve not reduce market efficiency.

The provisions under the Australian Consumer Law (ACL) recognise that consumers are particularly vulnerable to telemarketing sales techniques. For example “cooling off periods” exist to give consumers time to reconsider purchases made over the phone. “Cooling off” periods are recognised as necessary because telemarketing may be used to induce consumers to purchase goods or services they would not normally buy.[[5]](#footnote-5) Telemarketing is an industry known for its pressure selling. Consumers have limited time to compare offers and choose one which best meets their needs. In contrast, ideal market efficiency requires that consumers have perfect knowledge of price, utility, quality and production methods about a good or service.[[6]](#footnote-6) This allows consumers to rationally compare deals and make a purchase.

In the last two years telemarketing businesses have been involved in two high profile ACCC cases for breaches of Australian Consumer Law (ACL). In the first, the Federal Court found that EDirect Pty Ltd had sold mobile contracts to 350 customers from remote and regional communities across Australia who had no network coverage where they lived.[[7]](#footnote-7) In the second case the ACCC alleges telecommunications provider Startel contravened ACL provisions in relation to the telemarketing of mobile phone services.[[8]](#footnote-8) The case involves failure to inform consumers of their ‘cooling off’ rights and failure to provide adequate information about contracts. ACCAN concedes that not all telemarketers are involved in these types of practices; however an industry which relies primarily on phone based sales remains susceptible to problems of proper disclosure and clarity in marketing.

While not only attributable to telemarketing sales, it is estimated Australians spend approximately $1.5 billion per annum more than they need to by picking inappropriate telephone plans.[[9]](#footnote-9) There has been no evidence put forward by industry which would indicate telemarketing actually contributes to market efficiency, rather the experience and regulatory effort would indicate the opposite is true. In this context we should be considering steps which improve rather than hinder consumer decision making.

### The consumer - savings

While measures such as the Do Not Call Register need to consider their impact on business, equal consideration should be given to the impact on consumers. Consumers bear the cost at three stages under the current legislation. If the need to register was removed each of these negative regulatory impacts would be eliminated.

#### First level

At first instance the “opt-in” nature of the Register means those who are not registered experience significant cost to their time, productivity and tying up of telecommunications equipment. This cost tends to fall heaviest on vulnerable consumers who may lack awareness or capacity to register their number. This is evident in the research into awareness of the Register, which indicates that those on incomes less than $40K had 68% awareness, compared with those on $80K+ who had 80%.[[10]](#footnote-10)

ACMA research also indicates that over half of survey respondents had received an unsolicited telemarketing call from a business in the last six months.[[11]](#footnote-11) These weren’t isolated events, with 18 per cent of respondents receiving these calls on a daily basis and half at least once a week.[[12]](#footnote-12) Despite the Register coming into existence in 2007 there is still a relatively high lack of awareness of its existence. The 2009 study into awareness of the Register showed a quarter of respondents had not heard of it.[[13]](#footnote-13) Under the current model, due to lack of awareness, there is likely to be a section of the community who continue to have significant unwanted time taken up answering these calls.

#### Second level

On the second level, those who wish to prohibit the use of their number by telemarketers need to go through the process of registering. While this may not be a significant burden for an individual, over the whole economy, or even the 9 million numbers already registered, the cost is significant. The act of registering is enough of a barrier to prevent many people from registration. While 91% of survey respondents identified unsolicited telemarketing calls as a problem, there remains 68% of the population who have still not registered to prohibit calls.[[14]](#footnote-14)

Under a basic understanding of consumer decision making this discrepancy in consumer belief and action may seem irrational, although a deeper understanding shows consumer decision making is influenced by a varied and diverse array of inputs. For example, consumers tend to have an optimism bias, where they display unrealistic optimism about future events.[[15]](#footnote-15) This may lead a consumer to believe that after an annoying telemarketing call they are less likely to receive further calls in the future, and therefore they don’t take action to actually prevent future calls by signing up to the Register.

Alternatively consumers simply lack the time or knowledge of how to go through the process. Of those who were aware of the Register, but have not registered, 25% mentioned not having enough time and a further 16% mentioned lack of knowledge as the main reasons for not being registered.[[16]](#footnote-16) By aligning the Register with the *Spam Act* the barrier some consumers face in registering would be removed, this approach also better reflects the general lack of interest in being contacted by telemarketers.

While ‘spam’ is currently subjected to more rigorous regulation, according to the research consumers actually find spam less of a problem than telemarketing calls. ACMA research showed 24% of consumers *never* found spam to be a problem, whereas only 9% said telemarketing calls were never a problem.[[17]](#footnote-17) This may in part be due to the effectiveness of the *Spam Act* over the last decade. It also points to the need to align the *Spam Act* with the Register in order to reflect the preference of the overwhelming majority of consumers not to be contacted by telemarketers.

#### Third level

There is currently a third level of cost involved in the time taken to re-register a number once it lapses. The first tranche of numbers, some 1.04 million, are due to expire on 31 May 2015.[[18]](#footnote-18) This will involve cost in both informing parties of their need to re-register and the time taken to re-register. The research indicates that only 25% of people are even aware of the need to re-register.[[19]](#footnote-19) Currently the process of notifying for the need to re-register involves the ACMA sending an email reminder. Given this first wave of registrants may have changed email in the 8 years since registration they may miss this notification. This would require the ACMA to undertake further spending to advertise the need to re-register. More worryingly the Register may be targeted by scammers, who have in the past attempted to lure consumers into making purchases in order to remain protected.[[20]](#footnote-20) In the context of extremely low rates of public interest in receiving telemarketing calls and the cost requirement of re-registration this process is overly burdensome on consumers.

### The telemarketer - costs

The Association for Data-Driven Marketing and Advertising (ADMA) has been publically quoted as saying the option to treat telemarketing calls in the same manner as spam email “could kill up to 150,000 call centre jobs”.[[21]](#footnote-21) Although not stated, this figure appears to be based on the total size of the Australian call centre industry. Galexia research found that only 8% of call centre activity is outgoing or outbound cold calling.[[22]](#footnote-22) This means 92% is inbound, consisting of activities, such as technical support, pizza orders or other outbound activity like charities, political parties and businesses contacting their own customers. Based on these figures the overwhelming majority of jobs would not be affected by the proposed changes, in fact as discussed below there may be benefits for business.

In order to align with the *Spam Act* an individual or organisation would be required to show either express or inferred consent in order to contact a consumer.[[23]](#footnote-23) In some cases this would require the development of a system to record instances where consent is given. For some businesses this may mean additional cost, for many others this will merely be an alignment of how information is currently stored in order to meet *Spam Act* requirements.

### The telemarketer - savings

Creating a scheme whereby telemarketers could only contact customers who had specifically opted in for calls would create significant efficiencies for business. By targeting calls at consumers actually interested in those products and services telemarketers would not have to rely as heavily on the volume of calls currently required in order to make a single sale. Depending on a number of variables, a telemarketing business may only need to make a successful sale on a fraction of a percentage of calls in order to make a profit. This method of selling shifts the cost onto consumers who have their time taken up with ill targeted sales pitches.

The obvious cost saving would be the removal of the need to ‘wash’ number lists against the Register. These fees range on a sliding scale from free for 500 numbers to $90,000 for 100,000,000 numbers.[[24]](#footnote-24) The money saved here could be spent in more efficient marketing channels which do not shift the cost burden to consumers.

While telemarketing may be a relatively low cost method in the short term for achieving sales, there may be significant long term reputational damage from this practice. In the similar context of the *Spam Act*, the ACMA conducts business education around the reputational benefits business can accrue through responsible e–marketing.[[25]](#footnote-25) The main message is that compliance with the *Spam Act*, such as providing consumers with informed consent before sending marketing messages, may save business from significant reputational damage. The same applies to telemarketers, given the general opprobrium with which the research shows this form of marketing is held, it may be better for a business with long term success in mind to avoid the practice altogether.

## Continuation of the register

While ACCAN maintains the objectives of privacy and minimising the burden on consumers are best served by aligning the Register with the *Spam Act*, we believe the next best alternative is to introduce indefinite registration periods.

Best practice schemes overseas (such as the UK, USA, India and Spain) do not have limited registration periods.[[26]](#footnote-26) ACCAN and other bodies have raised these examples in previous submissions on the issue.[[27]](#footnote-27) For the reasons already outlined we believe that it is time to end the ad hoc extensions to the registration period and finally adopt indefinite registration in keeping with global standards.

1. If the Register is maintained registration period should be indefinite.

## Cleansing mechanism

The argument for having a finite registration period is predicated on the belief that indefinite registration will lead to an unmanageable level of inaccuracy on the Register. ACCAN believes the introduction of the proposed cleansing mechanism will remedy this problem.

Firstly, we believe the extent of the problem as outlined in the discussion paper is somewhat overstated. The paper recognises the limitations of looking at statistics on house moving alone in determining the level of inaccuracy of the Register. ACCAN believes the illustration of how inaccuracy might occur would be better described as a ‘worst case scenario’.[[28]](#footnote-28) The increase in mobile phone usage and subsequent decrease in landline use, as well as local number location portability, means that moving home does not mean losing your main contact number.[[29]](#footnote-29)

When coupled with the very low rates of interest in receiving unsolicited telemarketing calls the level of inaccuracy is minimal. Under the worst case scenario 42% of people moved residence in the last 5 years.[[30]](#footnote-30) The research would suggest of those 42% only 9% would not have problem with receiving telemarketing call.[[31]](#footnote-31) It is worth noting that these are not people who actually like receiving the calls; they just do not object to them. Assuming the remaining 91% of the population would be happy not to receive the calls, even if they had not registered, at this rate the Register would only become inaccurate by a rate of 3.78% every five years.

ACCAN understands the use of the IPND for the cleansing process was tested and received support from Communications Alliance and the ADMA in the Department’s IPND review.[[32]](#footnote-32) As its effect is to remove the protection of the Register from numbers which have been reissued we believe the impact on consumers will be minimal. The improved accuracy of the Register will mean industry may expend less time contacting consumers who are not interested in receiving unsolicited marketing. Given the main benefit will accrue to industry we believe it is consistent that industry should be allocated this extra cost.

1. If the Register is maintained it should be accompanied by a cleansing mechanism

## Conclusion

Once again ACCAN would like to thank the Department for consulting on the Register. We believe it has served a valuable purpose in protecting consumers’ privacy and saving time from unwanted calls. The large number of consumers already registered, the time and cost savings and the near unanimous dislike of unsolicited marketing all weight heavily in favour of moving to align the Register with the *Spam Act.* Alternatively we can see significant cost savings in moving to remove the limited registration periods.

Finally, ACCAN agrees with the Department that if the approach of aligning the relevant legislation with the *Spam Act* were accepted it would require further consultation on its implementation.

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3. ADMA, 2009, ‘Do Not Call Register Legislation Amendment Bill 2009 Submission’ [↑](#footnote-ref-3)
4. New plan could reduce nuisance sales calls, <http://www.news.com.au/national/new-plan-could-reduce-nuisance-sales-calls/story-fncynjr2-1226807961666> [↑](#footnote-ref-4)
5. ACCC, 2013, ‘Door-to-door and telemarketing sales’, *Competition and consumer law education programs*, <http://www.ccaeducationprograms.org/?page=tertiarystudents&moduleid=18&mname=Unfair_selling_practices&sectionid=169> [↑](#footnote-ref-5)
6. Perfect competition: <http://www.economicsonline.co.uk/Business_economics/Perfect_competition.html> [↑](#footnote-ref-6)
7. Telco telemarketer penalised $2.5m for verbal contracts with Indigenous consumers in areas with no network coverage - <http://www.accc.gov.au/media-release/telco-telemarketer-penalised-25m-for-verbal-contracts-with-indigenous-consumers-in> [↑](#footnote-ref-7)
8. ACCC takes action against telco for alleged ACL contraventions - <http://www.accc.gov.au/media-release/accc-takes-action-against-telco-for-alleged-acl-contraventions> [↑](#footnote-ref-8)
9. ACMA, 2012, ‘New TCP Code – frequently asked questions’, *Reconnecting the Customer*, p.7 [↑](#footnote-ref-9)
10. Community attitudes to unsolicited communications (2009) <http://www.acma.gov.au/theACMA/newspoll-report-community-attitudes-to-unsolicited-communications> [↑](#footnote-ref-10)
11. Community attitudes to unsolicited communications (2012) <http://www.acma.gov.au/theACMA/newspoll-report-community-attitudes-to-unsolicited-communications> [↑](#footnote-ref-11)
12. Unsolicited telemarketing calls and spam – Consumer experiences (2012) <http://www.acma.gov.au/theACMA/newspoll-report-community-attitudes-to-unsolicited-communications> [↑](#footnote-ref-12)
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15. Weinstein, N.D. 1980, ‘Unrealistic optimism about future life events’, *Journal of Personality and Social Psychology*, iss 39, pp. 806-820 [↑](#footnote-ref-15)
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19. Community attitudes to unsolicited communications (2009) <http://www.acma.gov.au/theACMA/newspoll-report-community-attitudes-to-unsolicited-communications> [↑](#footnote-ref-19)
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21. New plan could reduce nuisance sales calls, <http://www.news.com.au/national/new-plan-could-reduce-nuisance-sales-calls/story-fncynjr2-1226807961666> [↑](#footnote-ref-21)
22. Mr Chris Connolly, Director, Galexia, *Committee Hansard*, 5 February 2010, pp 41-42 [↑](#footnote-ref-22)
23. ACMA – Spam Consent: <http://www.acma.gov.au/Industry/Marketers/Anti-Spam/Ensuring-you-dont-spam/spam-consent-ensuring-you-dont-spam-i-acma> [↑](#footnote-ref-23)
24. Do not call register – subscription overview: <https://www.donotcall.gov.au/dncrtelem/sub_oview.cfm> [↑](#footnote-ref-24)
25. ACMA, ‘Successful e–marketing...it’s about reputation’, <http://archive.acma.gov.au/WEB/STANDARD/pc=PC_410079> [↑](#footnote-ref-25)
26. Galexia, 2009, ‘Emerging Best Practice in Do Not Call Registers’, August 2009 [↑](#footnote-ref-26)
27. ACCAN – You ‘Do Not Call’ rights: <https://accan.org.au/index.php?option=com_content&view=article&id=189:millions-of-households-set-to-be-fair-game-for-telemarketers&catid=126:phones&Itemid=273> [↑](#footnote-ref-27)
28. Department of Communications, 2013, ‘Optimal period of registration on the not call register’, December 2013 [↑](#footnote-ref-28)
29. ACMA, 2013, ‘Communications report – 2013-13’, p.18; Local number portability: keeping your number: <http://www.acma.gov.au/Citizen/Consumer-info/All-about-numbers/Keeping-your-number/local-number-portability-keeping-your-number-i-acma> [↑](#footnote-ref-29)
30. ABS Australian Social Trends, April 2013 <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30April+2013> [↑](#footnote-ref-30)
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32. The Integrated Public Number Database <http://www.communications.gov.au/telephone_services/telephone_numbering/integrated_public_number_database_ipnd> [↑](#footnote-ref-32)