

Regulation Impact Statement

Proposed Regulation:

Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 prepared under section 125A of the *Telecommunications Act 1997*.

1. BACKGROUND

The proposed industry standard, the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007*, deals with the issue of providing consumers and industry with a minimum level of expected conduct in relation to the making of telemarketing and research calls.

The Australian Communications and Media Authority (ACMA) is required to make an industry standard which sets out various minimum requirements relating to permitted calling times, the provision of contact information for the person or organisation making the call and other matters, such as providing for the termination of unsolicited calls.

The development of the mandatory industry standard is part of the Government's response to community concerns about the inconvenience and intrusiveness of telemarketing calls and the lack of a unified policy surrounding telemarketing activity in Australia.

The Standard will apply 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 public interest entities (such as charities, education institutions, registered political parties, and religious organisations) who are exempt from the general prohibition on calling numbers listed on the Do Not Call Register when making specific types of telemarketing calls.

The Standard is intended to promote responsible practices in relation to the making of telemarketing and research calls.

The Standard has been developed by ACMA in accordance with section 125A of the *Telecommunications Act 1997* (the *Telecommunications Act*), as inserted by the *Do Not Call Register (Consequential Amendments) Act 2006*. This requires that ACMA must make the Standard before the commencement of Part 2 of the *Do Not Call Register Act 2006*. The Standard will complement ACMA's initiatives under the *Do Not Call Register Act 2006*.

Matters which the Standard must cover under subsection 125A of the Telecommunications Act are:

- restricting the hours and/or days during which telemarketing calls may be made or attempted to be made;
- requiring that a telemarketing call must contain specified information about the relevant participant;
- requiring that, if a person other than the relevant participant caused a telemarketing call to be made, the call must contain specified information about the person who caused the call to be made;
- requiring the relevant participant to terminate a telemarketing call if a specified event happens;
- requiring the relevant participant to ensure that calling line identification is enabled in respect of the making of a telemarketing call.

The sections of the industry that the Standard will apply can be described as falling into two broad categories:

- participants in the telemarketing industry that make or propose to make telemarketing calls including calls to solicit donations; and
- participants in the social and market research industry that make or propose to make calls to conduct opinion polling or to carry out standard questionnaire-based research.

The Australian Direct Marketing Association (ADMA) and the Fundraising Institute Australia (FIA) play significant roles in the telemarketing industry. ADMA is the peak body representing the direct marketing industry in Australia and self-regulates the industry via a *Direct Marketing Code of Practice*. The FIA is the peak national body for fundraising in Australia. ADMA has over 500 members and the FIA has 1,200 members.

The Association of Market & Social Research Organisations (AMSRO) and the Australian Market & Social Research Society (AMSRS) are the two peak bodies for the Australian market and social research industry. AMSRO has approximately 100 member organisations and AMSRS has approximately 1,900 individual members.

In Australia there are approximately 3,700 contact centres operated by 1,700 organisations working across a number of industries (for example, Education, Health, Finance, Banking, Telecommunications, Insurance, Business Services and Media)¹. The Australian Teleservices Association (ATA) — the association for the contact centre industry in Australia has supplied figures indicating that there are approximately 4,000 contact centres in Australia operated by 1,500 organisations².

¹ Access Economics Report to ACMA, January 2007

² Access Economics Report to ACMA, January 2007

2. IDENTIFICATION OF THE PROBLEM

The problems that led to ACMA being required to develop a minimum telemarketing contact standard are documented in the Regulation Impact Statement contained in the *Explanatory Memorandum to the Do Not Call Register Bill 2006*.

In summary, the problems identified were significant community concern in relation to the volume of telemarketing calls; the inconvenience and intrusiveness of telemarketing practices; and the lack of unified policy surrounding telemarketing activity in Australia.

The rules governing telemarketing practices are contained in various instruments, including State, Territory and Commonwealth legislation and voluntary codes developed by industry. This fragmented and sometimes inconsistent approach was seen to have resulted in confusion both for agencies that utilise telemarketing services and consumers, creating some uncertainty of their respective obligations and rights and increased cost for industry³.

The governing rules are complex in relation to the time at which telemarketers can contact consumers. For example, different hours of contact are proscribed in NSW and Victoria. In NSW, telemarketers must not telephone consumers between the hours of 8.00 pm and 9.00 am seven days a week.⁴ In Victoria,⁵ contact is prohibited:

- at any time on a public holiday;
- between the hours of 5.00 pm and 9.00 am on a Saturday or Sunday; or
- between the hours of 8.00 pm and 9.00 am on any other day.

Other States and Territories proscribe different permitted calling hours, and there is currently no legislation regulating calling hours for telemarketers in South Australia.

Where telemarketers sell financial products, they must comply with the requirements set out in regulations made under the *Corporations Act 2001* (Cth), which sets specific requirements in relation to times at which consumers may be contacted⁶. Other rules affecting telemarketing activity are contained in the *Privacy Act 1988* (Cth).

Under ADMA's *Direct Marketing Code of Practice*,⁷ telemarketers must ensure that all telephone calls to customers are made at times that comply with any relevant State, Territory or Commonwealth legislation, and in all other instances, are made between the hours of 9.00 am and 8.00 pm Monday to Saturday, and not on Sundays or selected national public holidays.

Further information about the issues that gave rise to the requirement for ACMA to develop a mandatory industry standard is contained in the *Explanatory Memorandum to the Do Not Call Register Bill 2006*.

³ Do Not Call Register Bill 2006, Explanatory Memorandum pages 4-8

⁴ *Fair Trading Act 1987* (NSW) s40I.

⁵ *Fair Trading Act* (Vic) s67C.

⁶ Corporations Regulations 2001, Regulation 7.8.22

⁷ June 2006.

3. OBJECTIVE

To develop an industry standard in accordance with section 125A of the Telecommunications Act that promotes nationally consistent rules and responsible practices in relation to the making of telemarketing and research calls, but does not place an undue financial and administrative burden on industry.

4. IDENTIFICATION OF OPTIONS

The following three options were considered to address the identified objectives:

Option 1 – Establish minimum standards based on the least prohibitive State, Territory or Commonwealth laws, or industry codes of practice, that currently apply to telemarketing and research calls.

Option 2 – Establish minimum standards based on the SCOCA standards (reflecting the most common currently applicable State and Territory requirements) and existing industry rules as appropriate.

Option 3 – Establish minimum standards based on the most prohibitive State, Territory or Commonwealth law, or industry code of practice, that currently applies for telemarketing and research calls.

Maintaining current arrangements was rejected as an option as being inconsistent with the requirements of section 125A of the Telecommunications Act.

Option 1: Establish minimum standards based on the least prohibitive State, Territory or Commonwealth laws, or industry codes of practice, that currently apply for telemarketing and research calls.

Under this option, the industry standard would set minimum requirements based on the least prohibitive State, Territory or Commonwealth laws or industry codes of practice that currently apply to the making of telemarketing calls. As the industry standard is a minimum standard, where State, Territory or Commonwealth legislation set stricter requirements for the making of the call, these would also apply.

Permitted calling hours

Under this option, the prohibited calling hours for telemarketing and research calls would be a combination of the financial hawking provisions under the *Corporations Act 2001* and the New South Wales *Fair Trading Act 1987*.

Under the financial hawking provisions made under the *Corporations Act 2001*, telemarketers selling financial products must only call after 8.00 am and before 9.00 pm, excluding Sundays and specified national public holidays. Under the NSW *Fair Trading Act 1987*, telemarketers must not call after 8.00 pm on any day or before 9.00 am on any day.

Most states and territories already have legislation which applies to the making of telemarketing calls, including calling hours. For example, under the Victorian *Fair Trading Act 1999* telemarketers may not call at any time on a public holiday, before 9.00 am or after 5.00 pm on a Saturday or Sunday, or before 9.00 am or after 8.00 pm on any other day. In contrast, telemarketers calling consumers located in Queensland need to comply with the more restrictive calling hours set under the Queensland *Fair Trading Act 1989* which are 9.00 am – 6.00 pm weekdays, 9.00 am to 5.00 pm on Saturdays and no calls on Sundays or Public Holidays. As this is intended as a

minimum standard, telemarketers will still be required to comply with these more stringent requirements.

The hours during which market research and opinion polling calls may be made are largely unregulated compared to most telemarketing services. Current industry guidelines provide that researchers should avoid interviewing at inappropriate or inconvenient times and should not call later than 9.00 pm on weekdays and 8.30 pm on weekends. Australian Bureau of Statistics internal interviewing guidelines set calling times of 8.30 am to 8.30 pm weekdays, 9.00 am to 8.30 pm Saturday and 9.00 am to 5.00 pm Sundays. However, interviewees may 'opt out' of phone interviewing and revert to face to face or mailed questionnaires. The best time for phone interviews is usually negotiated with the interviewee and most contacts on Sundays are at the interviewee's request.

Possible calling hours

Telemarketing calls:

- 9.00 am to 8.00 pm, Sundays and public holidays
- 8.00 am to 9.00 pm other days

Market research calls:

- 9.00 am to 8.30 pm Saturdays and Sundays
- 8.30 am to 9.00 pm other days

Provision of information

The minimum standards relating to the provision of information for telemarketing calls would be based largely on the ADMA *Direct Marketing Code of Practice*. The Code requires that the following information is provided at the commencement of the call:

- the name of the person making the call;
- where a service bureau (caller under the Standard) is making the call, the name of the organisation on whose behalf the call is being made;
- the purpose of the call.

The following information would be provided on request:

- the name and contact details of the organisation on whose behalf the call is made, including a telephone number and street address;
- the name of the person who is responsible for handling consumer inquiries which the telemarketer receives;
- details of the source from which the consumer's personal information was obtained.

Termination of calls

While some State legislation deals with a duty to cease telephone marketing, the issue of termination of calls appears to be largely unregulated at this level.

For example, section 67B of the Victorian *Fair Trading Act 1999* requires that a supplier, or a person acting on behalf of a supplier, who is carrying on negotiations on the telephone that may lead to a marketing agreement, must cease those negotiations

immediately on the request of the person with whom the negotiations are being conducted. The ADMA Code of Practice requires that telemarketers must ensure that the consumer's telephone line is released within 5 seconds of the consumer hanging up or otherwise indicating that he or she requires the telemarketer to release the telephone line. The Ministerial Council on Consumer Affairs' *Direct Marketing Model Code of Practice* makes the same requirement of telemarketers. This would be used when developing the termination of calls requirement under this option.

Enabling of calling line information

Consistent across all three options is the requirement in the Standard that callers must ensure that calling line identification is enabled at the time the caller makes, or attempts to make, a call. This is a requirement under section 125A(1)(v) of the Telecommunications Act.

Option 2 – Establish minimum standards based on the SCOCA standards and existing industry rules as appropriate

Under this option, the telemarketing standard would set minimum standards based on the telemarketing standards developed by the Standing Committee of Officials of Consumer Affairs (SCOCA) as representing the most commonly held positions under existing legislation. The minimum standards to be imposed on research calls would also have regard to the SCOCA standards and existing industry rules and guidelines. Again, as this would be a minimum standard, telemarketers would also need to comply with any jurisdiction or industry specific legislation which imposed stricter requirements.

Permitted calling hours

Under the SCOCA position, calls would not be permitted:

- before 9.00 am or after 8.00 pm weekdays;
- before 9.00 am or after 5.00 pm Saturdays; and
- Sundays and national public holidays.

These calling time standards are generally consistent with those in a number of jurisdictions, for example the Northern Territory⁸ and Western Australia⁹. They are stricter than the requirements specified for New South Wales but are less restrictive than those currently applying in Queensland. As the industry standard is intended to be a minimum standard, those stricter requirements would continue to apply where relevant. Also, while the SCOCA indicated that calls should also be prohibited on state public holidays, as the Standard is intended to promote nationally consistent rules, it is preferable that the prohibition on calling times be restricted to national public holidays.

⁸ *Consumer Affairs and Fair Trading Act 1990* – section 103

⁹ *Door to Door Trading Act 1987* – Section 9.

As noted under Option 1, the Australian Bureau of Statistics' internal interviewing guidelines set calling times of 8.30 am to 8.30 pm weekdays, 9.00 am to 8.30 pm Saturday and 9.00 am to 5.00 pm Sundays. However, in practice, calls late on Saturdays are exceptional and most calls on Sundays are at the request of the called party. Given this and the desirability of promoting consistency in arrangements between different sections of the industry, prohibited calling hours/days for research calls could be:

- before 9.00 am or after 8.30 pm weekdays;
- before 9.00 am or after 5.00 pm Saturdays; and
- Sundays and national public holidays.

Provision of information

The minimum standards relating to the provision of information for telemarketing calls would be based largely on the standards agreed to by the SCOCA:

- the name of the person making the call and their employer;
- the name of the person or organisation on whose behalf the call is being made (where relevant and excluding telemarketing calls that are research calls); and
- the purpose of the call.

The following information would be provided on request:

- the full name (or a unique staff identifier), direct phone number and business address of the caller;
- the full name, direct telephone number and business address of the person or organisation on whose behalf the call is made;
- the full name, direct telephone number and business address of a person who is responsible for handling consumer complaints and/or enquiries in relation to the subject matter of the call. Where in the reasonable view of the caller, the consumer has formed a desire to make a complaint to an external body, the caller must provide appropriate contact details (at least to include name and phone number) for any external dispute mechanism that exists).
- details from which the caller obtained the call recipient's telephone number and the name of the person for who the call is intended (to be provided as soon as practicable and in any event within 30 days of request). This requirement would only apply to information disclosed to the caller after 1 July 2007 and would require disclosure of organisations who disclosed the information but not individuals.

For calls to conduct opinion polling and to carry out standard questionnaire-based research, callers would need to disclose the name of the person or organisation on whose behalf the call is made either on request, or otherwise no later than the end of the call. This is in acknowledgement that some call recipients may alter their response to survey questions if made aware of the party who commissioned the research before the survey begins.

Termination of calls

Callers would be required to terminate a call if the call recipient asks for the call to be terminated or otherwise indicates that they do not want the call to continue.

Callers would also be required to terminate a call if:

- the caller receives information that would lead a reasonable person to conclude that the call recipient is not at their usual residential address; and
- the time at the location at which the call recipient is located would be a prohibited time if that were the usual residential address of the call recipient; and
- the called party does not provide express permission for the call to continue.

While different to the SCOCA position, which mirrors that for Option 1, the requirement to release the line after the caller hangs up is largely (if not completely) redundant for modern networks. Further the requirement that the call be terminated upon request is considered consistent with the intention behind the SCOCA (and ADMA Code of Practice) requirements or recommendations on this issue.

Enabling of calling line information

Consistent across all three options is that the standard include a requirement that callers must ensure that calling line identification is enabled at the time the caller makes, or attempts to make, a call. This is a requirement under section 125A(1)(v) of the Telecommunications Act.

Option 3: Establish minimum standards based on the most prohibitive State, Territory or Commonwealth laws, or industry codes of practice, that currently apply to telemarketing and research calls.

Under this option, minimum standards would be established based on the most stringent regulation or code of practice currently applying. Compliance with the Standard would ensure compliance with other State and Commonwealth legislation.

Permitted calling hours

The Queensland *Fair Trading Act 1989* currently specifies the tightest calling timeframes for telemarketers. In Queensland, telemarketers are permitted to call between:

- 9.00 am and 6.00 pm on weekdays;
- 9.00 am and 5.00 pm on Saturdays; or

No calls are allowed on Sundays or public holidays.

Under this option, the Queensland timeframes would be replicated as the minimum standards in the industry standard. This option is designed to maximise consistency in regulation and the same calling restrictions would apply to research calls as to other telemarketing call types.

Other provisions

Provisions relating to the provision of information, the termination of calls and enabling calling line identification would be the same as Option 2.

5. ASSESSMENT OF IMPACT OF EACH OPTION

Option 1: Establish minimum standards based on the least prohibitive State, Territory or Commonwealth laws, or industry codes of practice, that currently apply for telemarketing and research calls

Groups likely to be impacted by adoption of this option

Participants in the telemarketing industry that make or propose to make telemarketing calls including calls to solicit donations will be impacted by the adoption of this option as will participants in the social and market research industry that make or propose to make calls to conduct opinion polling or to carry out standard questionnaire-based research.

Consumers who may be called by participants in the telemarketing industry or social and market researchers will also be impacted by the adoption of this option.

The impact of this option is likely to be limited as it is based on the least prohibitive State, Territory or Commonwealth laws, or industry codes that currently apply for telemarketing and research calls.

Advantages

1. Minimal cost impost from the new requirements

As the requirements of the industry standard would replicate the least onerous requirements currently applied, plus any new matters which must be dealt with section 125A of the Telecommunications Act, it will minimise additional costs imposed on industry as a result of its implementation.

In addition, some of these requirements are necessary parts of the calling practices currently associated with making most telemarketing calls. An example of this is the provision of the name of the person making the call and indicating the purpose of the call. This will also minimise the cost impact of this option.

2. Familiarity of industry participants with current arrangements

By largely replicating current arrangements, this option will minimise the research, education and process change requirements for industry participants because of their familiarity and need to comply with the current arrangements in the markets that they operate.

3. Provision of space for jurisdiction specific legislation

Adoption of this option would provide flexibility for jurisdiction or industry specific legislation where seen as appropriate. For example, State or industry specific legislation can be made where there are particular concerns about telemarketing practices in that area.

4. More room for Industry Codes

This is consistent with maximising opportunities for industry self-regulation. Under Part 6 of the Telecommunications Act, the telemarketing industry (or sections of the industry) may develop industry codes relating to telemarketing activities. Minimising

the issues dealt with in the industry standard provides greater opportunity for industry to develop rules through the self-regulatory code development process.

5. Consistent with imposition of minimum standards

Adoption of this option is consistent with a minimum standard and provides scope for development of industry or state specific regulation where seen as appropriate. There will be benefit to the community from the introduction of minimum standards in relation to telemarketing and research calls. However the benefit to the community will be greater under the other two options as the minimum standards under Option 1 offer the least protection to consumers as they are based on the least prohibitive existing laws or industry codes of practice.

6. Minimises impact of new calling time restrictions on charities and market and social researchers.

Calling times for charities and market and social researchers are currently not as strictly regulated as other telemarketing services. Adoption of this option will lessen the initial cost impact on the activities of these sections of the industry.

Disadvantages

1. Does not provide as much protection to consumers as the other two options

As it is based on the least prohibitive laws and codes of practice, Option 1 is unlikely to address to any great extent the rising community concerns about the inconvenience and intrusiveness of telemarketing on Australians. Compared to Options 2 and 3, Option 1 does not provide as much additional protection to consumers. This is particularly the case in regard to permitted calling hours where telemarketing calls would be allowed to be made to 8.00 pm on Sundays and public holidays and to 9.00 pm on other days.

2. Is not consistent with introducing greater consistency in legislation

This option would provide no or, at best, minimal improvements in consistency of regulation. Regulation of telemarketing would continue to be a mixture of Commonwealth, State and Territory legislation with the additional overlay of the telemarketing and research calls industry standard

Misses opportunities to decrease compliance costs with industry subject to a variety of varying requirements

Setting a minimum standard based on the minimum current requirements, does not address industry concerns about the increased compliance costs associated with the current fragmented regulatory approach.

3. Cost to government of multiple regulation and complaints handling systems

Adoption of this option will continue issues of multiple complaints handling systems with additional confusion for consumers and cost for government. As the industry standard will be of limited coverage compared to Options 2 and 3, this will minimise the cost reduction of a single national standard.

This is not a preferred option.

Option 2 – Establish minimum standards based on the SCOCA standards and existing industry rules as appropriate

Groups likely to be impacted by adoption of this option

Participants in the telemarketing industry that make or propose to make telemarketing calls including calls to solicit donations will be impacted by the adoption of this option. In the telemarketing industry, the greatest impact is likely to be on those participants making telemarketing calls to services in New South Wales and South Australia as the minimum standards reduce the hours in which telemarketing and research calls can be made in each State.

Participants in the social and market research industry that make or propose to make calls to conduct opinion polling or to carry out standard questionnaire-based research will be impacted by adoption of this option.

Consumers who may be called by participants in the telemarketing industry or social and market researchers will also be impacted by the adoption of this option.

Advantages

1. Reduced cost imposed from the new requirements

As the requirements of the industry standard would replicate the most common requirements currently applying, plus any new requirements created by section 125A of the Act, it would potentially impose some new costs on industry for some requirements compared to Option 1. However as these represent the most common current standards, for example restricting weekday telemarketing calls to between 9.00 am and 8.00 pm, the associated costs would be significantly less than those associated with the adoption of Option 3 while assisting in addressing consumer concerns about the inconvenience and intrusiveness of telemarketing calls.

In addition, some of these requirements are necessary parts of the calling practices currently associated with making a telemarketing and research call, for example providing the name of the person making the call and indicating the purpose of the call. Consequently, mandating these requirements should impose no additional costs.

2. Level of familiarity of telemarketers with current arrangements

Largely replicating the most common current arrangements this option will minimise the research and education requirements for telemarketers through their familiarity with the arrangements in the markets that they operate.

This should in turn minimise the costs to industry of developing new internal procedures and educating staff about those procedures.

3. Provides consumers with greater levels of certainty about current arrangements

The more comprehensive nature of this option compared to Option 1 will provide consumers with greater certainty about their rights and telemarketers greater certainty about their obligations when making telemarketing calls. This is because, excepting instances where specific stricter requirements are set for particular jurisdictions or industries, the industry standard will set out the minimum requirements for the issues it deals with. By setting minimum standards, the standard will promote responsible

practices in relation to the making of telemarketing and research calls. As there are fewer hours in which telemarketers and researchers can call consumers compared to Option 1, this option is likely to better address growing community concerns about the intrusiveness and inconvenience of telemarketing on Australians.

4. Brings greater levels of consistency to current arrangements reducing industry costs

The imposition of a standard replicating most common requirements under current practices will introduce greater consistency in requirements. This will assist in addressing one of the main drivers of the development of the Standard, the increased cost to industry and government introduced through the variety of arrangements applying in different industries and jurisdictions.

5. Provides flexibility for state or industry specific legislation imposing more restrictive requirements where seen as appropriate

This option provides flexibility for specific jurisdiction or industry specific legislation where seen as appropriate. Adoption of this option is consistent with the industry standard being a minimum standard with scope for the development of industry or state specific regulation where seen as appropriate.

Disadvantages

1. Significant restriction in calling times for some states and industries

This would impose stricter restrictions on calling hours in some States, particularly on weekends, for calls made to consumers in New South Wales, as well as for calls by charities and market and social researchers. This option represents a reduction in available calling hours of 14 hours per week (out of 77) under existing New South Wales legislation. It introduces calling time restrictions on telemarketing and research calls in South Australia for the first time as unlike other States, South Australia does not currently have existing legislation that governs telemarketing calling hours.

This option represents a reduction in calling hours for market and social researchers. Current self-regulatory arrangements allow calls between 8.00am to 9.00pm on weekdays and between 9.00am and 8.30pm on weekends so the proposed standard will result in tighter calling times for researchers. Under this option, researchers will have 17.5 fewer hours to make research calls per week than are currently allowed under existing self-regulatory arrangements.

2. While this option provides for greater levels of consistency it does not provide for uniform requirements in all states

This option would result in greater conformity in regulation between the different states but would still allow for stricter requirements in some circumstances, for example the stricter calling hours that apply in Queensland. Under the Queensland *Fair Trading Act 1989*, telemarketing calls are prohibited after 6.00 pm on weekdays. This means that while regulation will be more consistent on a national basis, there will be some differences between different jurisdictions and industries.

This is a preferred option.

Option 3: Establish minimum standards based on the most prohibitive State, Territory or Commonwealth laws, or industry codes of practice, that currently apply to telemarketing and research calls.

Groups likely to be impacted by adoption of this option

Participants in the telemarketing industry that make or propose to make telemarketing calls including calls to solicit donations will be impacted by the adoption of this option. The impact will be most felt by participants undertaking telemarketing and research call activities to services located outside of Queensland because the minimum calling hour restrictions in the standard are based on existing Queensland laws as these laws are the most prohibitive.

Consumers who may be called by participants in the telemarketing industry or social and market researchers will also be impacted by the adoption of this option.

Advantages

- 1. Provides consumers with greater protection and certainty about current arrangements*

Under this option there are fewer hours in which telemarketers and researchers can call consumers compared to Options 1 and 2, this option is likely to better address growing community concerns about the intrusiveness and inconvenience of telemarketing on Australians. Introduction of uniform regulation through setting a consistent standard applying in all jurisdictions and industries will provide consumers and industry with certainty about regulatory arrangements.

- 2. Brings consistency to current arrangements reducing industry costs*

As the minimum standards under this option are based on the most prohibitive State, Territory or Commonwealth laws, compliance with the standard would mean compliance with all existing laws. Eliminating variation between different jurisdictions should reduce industry costs associated with complying with a variety of regulatory requirements.

- 3. Reduced cost to government through reducing duplication in regulation and complaints handling requirements*

There is likely to be reduced costs to government through a reduction in regulation and complaints handling requirements.

Disadvantages

- 1. Significant restrictions in calling times for participants in the telemarketing and social industry*

With the exception of telemarketers in Queensland that are not charities or undertaking market and social research, introducing this option would significantly reduce the calling hours for participants in the telemarketing and social market research industries

- 2. Significant costs to industry*

Reduction in calling hours will introduce very significant restrictions to participants in the telemarketing and social and market research industries and likely exclude significant demographics from being called. These costs are likely to outweigh the additional benefits gained from increased certainty in regulatory arrangements and the greater protection afforded to consumers compared to options 1 and 2.

This is not a preferred option.

6. BUSINESS COMPLIANCE COSTS

Education

Telemarketers and social and marketers will be required to educate and inform staff about changes to regulation applying to the making of telemarketing and research calls. However, industry participants must currently educate staff about issues such as calling hours and the information to be provided to call recipients, which may be different for each telemarketing or social or market research campaign, and if staff turnover is high, they would need to undertake training for new staff regularly. Given the significant decrease in differences in regulation between different jurisdictions brought about by the introduction of the Standard, this will represent a net cost saving for telemarketers and social and market researchers.

Record Keeping

Participants in the telemarketing and social and market research industries will be required to provide information about the organisational source from which the called party's name and phone number were obtained. This is unlikely to impose significant costs on telemarketers as under the *ADMA Direct Marketing Code of Practice*, in relation to unsolicited telemarketing calls, ADMA members must provide on request details of the source from which it obtained the consumer's personal information. Also, under the market and social research industry's *Market and Social Research Privacy Principles*, callers must disclose the source of the research sample (for example, information collected by researchers or publicly available lists such as a telephone directory or the electoral roll) no later than the end of the research call (unless there are reasonable grounds not to do so).

Telemarketers will need to ensure that they have sufficient record keeping procedures in place to provide this information. But given that most (if not all) telemarketers will already be required to disclose this information on request, it is considered likely to have no or negligible cost impact for telemarketers. Additionally, only information received by the telemarketer after 1 July 2007 need be disclosed, minimising the record keeping development costs for any organisations who have not stored this information to date.

Procedural

Businesses will be required to ensure that calling line identification is enabled when making or attempting to make a telemarketing or research call under the Standard. ACMA has no discretion regarding this requirement as it is mandatory under section 125A of the Telecommunications Act and has consequently not considered the cost of this as part of its decision making process.

The Standard also imposes a number of information provision requirements at the commencement of the call or upon the called party's request. As the information

which must be provided at the commencement of the call is a necessary part of the call, mandating these requirements is anticipated to have no cost impact for telemarketers. As the other information provision requirements are only required to be provided on request, and are consistent with existing requirements, any required changes (e.g. the development of new scripts) are likely to be minimal and the cost impact negligible.

7. CONSULTATION

ACMA commenced the development of the industry standard with the release of a discussion paper, *Industry Standard for the Making of Telemarketing Calls*, in August 2006. ACMA received over 40 public submissions from a variety of areas including industry associations, public authorities, the banking and finance sector, the charitable sector, members of the telecommunications industry, special interest groups, social and market research organisations, consumer groups, small businesses and the general public. Despite some differences between submitters on the manner and form of arrangements to be made under the proposed standard, all submissions gave in-principle support to the notion of greater regulation by Government of the matters required to be contained in the Standard.

On 21 December 2006, ACMA release a draft version of the Standard for public comment. Thirty two submissions were received from government, industry association and participants, consumer groups and the general public.

A number of issues were raised by submitters particularly around the continued operation of State and Territory law, information which must be provided by telemarketers, and the provision of calling line identification, resulting in minor changes to the proposed industry standard.

Telemarketers

Nine responses were received from participants in the telemarketing industry.

Common themes from these responses were:

- support for a single national standard for the regulation of telemarketing calls so as to reduce industry compliance costs;
- concerns that requiring calling line identification to be enabled may not be practical in all circumstances and may not be consistent with the introduction of some new technologies.
- concerns that call operators should not be required to disclose their full name and that a personal identifier should be allowed to be used instead. Also, callers should not be required to disclose a street address but should be able to provide a postal address where contact details are requested;

These concerns were addressed through providing an option that call operators may provide, on request, either their full name or alternatively an individual staff identifier. Callers can also provide a street, postal or email address for consumer contacts.

When a call is made to a consumer at a time that would be a prohibited time if at their usual residential address, and the consumer does not expressly state that they wish the call to continue, the caller must terminate the call.

Other issues raised by telemarketers were considered to relate to the legislation requiring the making of the industry standard and outside the scope of matters within ACMA's discretion when making the Standard.

Researchers

Four responses were received from organisations which undertake market and/or social research. Comments revolved particularly around the issue of calling hours, The proposed 8.30 pm calling time restriction on weekdays and no calls allowed on Sundays has led to concerns from researchers that their ability to obtain a representative sample of people will be significantly reduced and that this will add to non-sampling error and impact the quality of research conducted.

ACMA considers that the cost of prohibiting researchers from making calls from 8.30 pm till 9.00 pm on weekdays, from 5.00 pm till 6.00 pm on Saturdays and on Sundays is likely outweighed by the benefits to consumers from promoting consistency in calling hours.

Industry Bodies

Six responses were received from bodies which represent various sections of the telemarketing industry including charities and market research organisations.

Comments received from industry bodies were generally supportive of an industry standard that would impose uniform national standards for telemarketing calls. The following comments were made by one or more submitters:

- The standard should override State and Territory laws.
- Public holidays should be restricted to national public holidays.
- Mandating the enabling of calling line identification does not provide for future technologies which may not be able to present calling line identification information.
- The development of separate telemarketing and research calling requirements is likely to lead to increased consumer confusion and complaints, with consequent increased compliance-related costs for government. However, industry bodies representing research organisations supported the differences made for research calls and supported a further extension of calling hours for research calls.
- The disclosure of information should not require the full name of the call operator, disclosure of street addresses should not be mandated and callers should not be required to disclose the source of information used for the making of a call. This should be done so as to protect the privacy and security of telemarketing operators.
- The hawking of financial products should not be prohibited during hours permitted under regulations made under the *Corporations Act 2001*.

To promote certainty and national consistency in the days on which the making of telemarketing calls are allowed to be made, prohibited holidays have been restricted to listed national public holidays.

ACMA believes that the differences between the telemarketing and research call requirements are minimal and are unlikely to result in any significant confusion regarding calling times or the information that must be provided by a caller.

However, ACMA also believes that any exceptions made to permit longer calling hours specifically for telemarketers' hawking financial products is likely to cause significant confusion for consumers and is unlikely to address existing consumer concerns about telemarketing practices.

Other issues raised by industry bodies were considered to relate to the legislation requiring the making of the industry standard and outside the scope of matters within ACMA's discretion when making the industry standard.

Consumers and Consumer Representatives

ACMA received four responses from consumers or consumer representative organisations. Responses received from one or more submitters included:

- a request that callers should ensure that the calling number display is available when making the call should disclose a number appropriate for handling complaints from called parties;
- queries on why longer hours have been specified for research calls; and

Longer hours have been specified for researchers to facilitate the transition to the new arrangements. Other issues raised by consumers and consumer representatives were considered to relate to the legislation requiring the making of the industry standard and outside the scope of matters within ACMA's discretion when making the standard.

Government and Other

ACMA received nine submissions from government or other regulatory agencies at State, Territory and Federal level. The majority of submitters generally supported the Standard in its current format, but a number of issues were raised:

- strong support from the States for being able to devise stronger requirements in particular circumstances than those specified in the Standard;
- the industry standard should make reference to relevant sections of the *Trade Practices Act 1974*, and in particular provisions dealing with consumer protection issues such as unconscionable conduct;
- the provisions of the standard were not seen as inconsistent with financial service regulations;
- telemarketers should not require the disclosure of personal information of the call operator;
- telemarketers should require express consent in order to make calls during the prohibited calling hours and nominees should not be able to give this consent;
- callers should be required to terminate a call if it becomes obvious that the call recipient is not able to consent to purchasing goods or services offered;
- references to calling line identification should be as per ADMA code.

ACMA has also consulted with industry representatives and members of the SCOCA Working Group on the Development of Uniform Telecommunications Standards. Comments made by the SCOCA have been incorporated into the Standard.

As noted above, a number of submitters commented on the privacy implications of the potential disclosure of personal information and these have been reflected in the

Standard. ACMA considers that requiring express consent before the making of a telemarketing call during the prohibited hours and nominees not being able to give this consent would introduce significant inconsistencies between different sections of the Do Not Call Register scheme. It is likely to introduce additional confusion for industry and consumers that would outweigh the benefits of this proposal.

ACMA also considers that the issue of whether a caller should be required to terminate a call if it is obvious that the recipient is not able to consent to purchasing goods or services offered is more properly dealt with through the development of an industry code.

Other issues raised by industry bodies were considered to relate to the legislation requiring the making of the Standard and outside the scope of matters within ACMA's discretion when making the Standard.

8. CONCLUSION AND RECOMMENDED OPTION

Option 1: Establish minimum standards based on the least prohibitive State, Territory or Commonwealth laws, or industry codes of practice, that currently apply for telemarketing and research calls

This option is inconsistent with the policy objectives of the standard and is unsatisfactory. It fails to provide consumers with greater certainty regarding the minimum level of conduct they can expect from unsolicited telemarketing calls or provide greater consistency in Australian telemarketing regulation.

Option 2 – Establish minimum standards based on the SCOCA standards and existing industry rules as appropriate

Adoption of this option is consistent with the objective of providing consumers with greater certainty regarding the minimum level of conduct they can expect from unsolicited telemarketing calls. It also introduces greater consistency in Australian telemarketing regulation balanced against the increased cost to industry of imposing a uniform minimum national regulatory scheme which matches the strictest requirements currently in place.

Option 3: Establish minimum standards based on the most prohibitive State, Territory or Commonwealth laws, or industry codes of practice, that currently apply to telemarketing and research calls.

While adoption of this option would provide consumers with greater certainty about current arrangements and bring greater consistency to telemarketing arrangements, the very significant reduction in calling times would impose unacceptable costs on industry.

9. RECOMMENDATION

It is recommended that Option 2 be adopted.

10. IMPLEMENTATION AND REVIEW

The Standard will commence at the same time as Part 2 of the *Do Not Call Register Act 2006*. Disclosing the source of information used in making a telemarketing and research call will be required for calls made after 1 July 2007.

ACMA's education program to industry and consumers for the Standard includes updates on the ACMA website, information on the Do Not Call Register website, a media release announcing the release of the Standard, inclusion in industry newsletters and other advertising, and brochures for industry and consumers.

ACMA intends to review section 5 of the Standard – Prohibited calling times – as soon as practicable after the end of 12 months after the commencement of the industry standard. The Minister for Communications, Information Technology and the Arts must also cause a review to be conducted of the operation of those sections of Part 6 of the *Telecommunications Act 1997* to the extent to which that Part relates to telemarketing activities. This review must be conducted before the end of the period of 3 years after the commencement of section 45 of the *Do Not Call Register Act 2006* or as soon as practicable after the end of that three year period.