

EXPLANATORY STATEMENT

Australian Communications and Media Authority Act 2005

Australian Communications and Media Authority (Telemarketing Industry Standard) Direction No. 1 of 2007

Issued by the authority of the Minister for Communications, Information Technology and the Arts

Overview

The *Australian Communications and Media Authority (Telemarketing Industry Standard) Direction No. 1 of 2007* (the Direction) is made by the Minister for Communications, Information Technology and the Arts (the Minister) under section 14 of the *Australian Communications and Media Authority Act 2005* (the ACMA Act). Section 14 of the ACMA Act provides that the Minister may give the Australian Communications and Media Authority (ACMA) written directions in relation to the performance of its functions and the exercise of its powers.

The Direction requires ACMA to consider whether to exercise its power in section 130 of the *Telecommunications Act 1997* (Telecommunications Act) to vary the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* (the Telemarketing Industry Standard) so as to remove the prohibition on making research calls on a Sunday and instead to prohibit the making of research calls on a Sunday during certain hours. The Direction requires the ACMA to take into account certain specified matters in deciding whether to vary the Standard in this way. If ACMA exercises its power to vary the Telemarketing Industry Standard as a result of this Direction, the Direction further directs ACMA to make any variation to the Telemarketing Industry Standard so as to commence at the same time as Part 2 of the *Do Not Call Register Act 2006* (DNCR Act) commences.

Background

ACMA is required, under section 125A of the Telecommunications Act, to make an industry standard which applies to the telemarketing industry that deals with certain matters relating to telemarketing, including the permitted calling hours and/or days during which telemarketing and research calls may be made. On 22 March 2007 ACMA made the Telemarketing Industry Standard. Amongst other matters, this Standard sets out prohibited calling times for telemarketing and research calls. The Telemarketing Industry Standard prohibits a caller from making, or attempting to make, a research call on a Sunday (amongst other times).

It has come to the Minister's attention that prohibiting research calls on a Sunday could detrimentally affect research activities. Consequently the Minister has made a direction to require ACMA to consider varying the Telemarketing Industry Standard so as to permit the making of research calls at certain specified times on a Sunday. In deciding whether or not to exercise its power to vary the standard under section 130 of the Telecommunications Act, the Minister has directed the ACMA to take into account certain specified matters. Before exercising its power under section 130 the ACMA must satisfy itself of certain matters. This Direction does not limit the

requirement on ACMA to be satisfied of the matters set out in section 130 of the Telecommunications Act prior to varying the Telemarketing Industry Standard.

Notes on Clauses

Clause 1 – Name of Direction

This clause provides for the citation of the Direction.

Clause 2 - Commencement

This clause provides that the Direction will take effect the day after it is registered on the Federal Register of Legislative Instruments.

Clause 3 - Definitions

Clause 3 defines the terms used throughout the Direction.

Clause 4 – Direction – ACMA to consider whether to exercise its power to vary the Telemarketing Industry Standard

Subclause 4(1) requires ACMA to consider whether to exercise its power in section 130 of the Telecommunications Act to vary the Telemarketing Industry Standard so as to:

- (a) remove the prohibition on making, or attempting to make, a research call on a Sunday, which is currently provided for in paragraph 5(2)(e) of the Telemarketing Industry Standard;
- (b) instead prohibit the making, or attempting to make a research call on a Sunday at the same times as such calls are prohibited to be made on a Saturday, that is before 9am and after 5pm, as provided for in paragraphs 5(2)(c) and (d) of the Telemarketing Industry Standard.

Subclause 4(2) requires the ACMA to have regard to certain specified matters when considering whether to exercise its power in section 130. In particular, the Direction requires the ACMA to have regard to:

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

In considering public benefits derived from accurate and high quality research, 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.

In considering the likely impact of prohibiting research calls on a Sunday, ACMA should also consider 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.

For example, loss of the ability to make research calls on Sundays is likely to have a negative impact on longitudinal studies where data has previously been collected on Sundays. In addition, industry has identified that specific demographic groups would be underrepresented as a result of the prohibition on making research calls on Sundays.

The inclusion of these two matters in subclause 4(2) is not intended to limit the matters that ACMA may consider in deciding whether to exercise its power to vary the Telemarketing Industry Standard.

Under section 130 the ACMA can only vary an industry standard if it is satisfied that it is necessary or convenient to do so for the purposes specified in subsection 130(1) of the Telecommunications Act. This clause does not affect the requirement that ACMA must be satisfied of these purposes prior to varying the Telemarketing Industry Standard.

If ACMA exercises its power to vary the Telemarketing Industry Standard as a result of this Direction, this clause further directs ACMA to provide that the variation commences at the same time as Part 2 of the DNCR Act commences (subclause 4(3)). This ensures that the varied permitted calling hours for research calls commence at the same time as the other provisions in the Telemarketing Industry Standard, which commence at the same time as Part 2 of the DNCR Act commences.

Consultation

ACMA has been consulted in making this Direction as this Direction directs ACMA to consider whether to exercise its powers under the Telecommunications Act. Broader consultation with parties that may be potentially affected has not been undertaken as ACMA is required to undertake a public consultation process if and when it decides to exercise its powers to vary the Telemarketing Industry Standard under the Telecommunications Act.