



Australian Government

Department of Communications

Department of Communications

Optimal period of Registration on the Do Not Call Register

A discussion paper

DECEMBER 2013

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Terminology

Account-holder is an individual or organisation that has as an account with a telecommunications service provider for the supply of telephone and/or internet services. For the purpose of this discussion paper, 'subscriber' includes a nominee of an account-holder.

The **Australian Communications and Media Authority** or **ACMA** is Australia's broadcasting, internet, radio communications and telecommunications regulator, and amongst other things has responsibility for enforcing the *Do Not Call Register Act 2006* and *Spam Act 2003*.

The **Australian Law Reform Commission** or **ALRC** is an independent statutory authority that reviews Commonwealth laws. In 2008 the ALRC made a number of recommendations for changes to Australian privacy law.

Direct marketing is a form of advertising that seeks to market to citizens individually. For example, direct marketing can be via mail, email, social media, door knocking, telephone or fax.

The **Do Not Call Register** or **Register** is an Australian Government service that allows citizens to opt-out of receiving certain unsolicited telemarketing calls and marketing faxes by listing their telephone or fax numbers on the Register.

The **Integrated Public Number Database** or **IPND** is a centralised database containing records of all Australian public numbers and associated customer details. The IPND is managed by Telstra Corporation Ltd (Telstra) as a condition of its carrier licence.

A **number** is a network identifier that allows a person to contact another person over the telecommunications network. In this paper the words 'telephone number', 'fax number' and 'number' are used interchangeably.

Number portability refers to the ability for subscribers to keep their telephone number when changing provider or the location of a fixed telephone service.

A **registrant** is a telephone or fax service account-holder who has registered their number on the Register.

The **Register Operator** is the organisation contracted to operate the Register on the ACMA's behalf. At present the Register Operator is Service Stream Solutions Pty Ltd.

'**Telemarketing calls**' and '**marketing faxes**' are broadly defined in the *Do Not Call Register Act 2006*. In general terms, a telemarketing call is a voice call made to an Australian number where one of the purposes of the call is to:

- offer to, supply, advertise, or promote a supplier of, goods or services
- offer to, supply, advertise, or promote a supplier of, land or an interest in land
- offer to, supply, advertise, or promote a provider of, a business opportunity or investment opportunity
- solicit donations

Introduction

The Do Not Call Register (the Register) allows registrants to opt out of receiving certain unsolicited telemarketing calls and marketing faxes by listing their telephone or fax numbers on the Register. When the Register was first established in 2007, registrations were valid for three years from registration. Since then, the registration period has been extended on three occasions, and is now set at eight years.

This discussion paper is seeking community views on the optimal period of registration for numbers on the Register. Public comment is sought on four options:

- Option 1) Reduce the period of registration to three years
- Option 2) Retain the current eight year registration period
- Option 3) Extend the registration period to indefinite
- Option 4) Remove the need to register

The Department of Communications (the Department) is seeking comment on which of these four options maximises the value of the Register to Australian consumers and ensures that their privacy is adequately protected, while minimising the compliance cost on businesses engaging in telemarketing and fax marketing activities as far as possible. In addition, for options one, two and three, the Department is also considering the introduction of a cleansing mechanism, to improve the accuracy of the Register.

Lodgement of submissions

The Department invites submissions from the public, industry and other interested organisations. The closing date for submissions is **31 January 2014**. Submissions can be lodged in the following ways:

Email (preferred): DNC.consultation@communications.gov.au

Post: The Director
Cloud Computing and Privacy
Department of Communications
GPO Box 2154
CANBERRA ACT 2601

Enquiries about issues raised in the paper may be directed by email to DNC.consultation@communications.gov.au or by telephone to Tristan Kathage, Director, Cloud Computing and Privacy on (02) 6271 1951.

This paper is for consultation purposes only and does not represent current Australian Government policy.

Discussion questions are included in boxes throughout this paper to guide submissions. Respondents are invited to provide written submissions or comments to address these questions, or provide a more general response if preferred. For convenience, the full list of questions is provided at **Attachment A**.

Submissions must include the respondent's name, organisation (if relevant) and contact details.

Respondents should be aware that submissions may be made publicly available, including on the Department's website (www.communications.gov.au). The Department reserves the right not to publish any submission, or part of a submission, which in the view of the Department contains potentially defamatory material, or where it considers it appropriate to do so for confidentiality or other reasons.

The Department will treat all submissions as non-confidential information unless the respondent specifically requests that the submission, or a part of the submission, is kept confidential, and provides acceptable reasons with the request. Email disclaimers will not be considered sufficient confidentiality requests. Respondents should note that submissions or comments are generally subject to the provisions of the *Freedom of Information Act 1982*.

Background

The *Do Not Call Register Act 2006* (the Act), requires the Australian Communications and Media Authority (ACMA) to establish and maintain the Register. The Register became operational in May 2007, and since then 9 million numbers have been registered¹.

The key objectives of the Register are to:

- reduce the inconvenience and intrusiveness of unsolicited telemarketing calls and marketing faxes by enabling consumers to list their fixed line and mobile phone numbers on the Register
- provide a consistent and efficient operating environment for businesses engaging in telemarketing and fax marketing activities
- establish an effective complaints handling mechanism for consumers to report complaints about unsolicited telemarketing calls and marketing faxes.

The Telecommunications regulator

The ACMA is Australia's telecommunications regulator. Amongst other things, the ACMA is responsible for operating the Do Not Call Register and enforcing the Act.

More information about the ACMA's role is available at www.acma.gov.au.

¹ See <http://www.acma.gov.au/Industry/Marketers/Do-not-call-register/How-to-comply-with-the-Do-Not-Call-Register/do-not-call-register-rings-up-nine-million-numbers>

How does the Register work?

The Register allows consumers to register their numbers, to opt-out of receiving certain telemarketing calls and marketing faxes. There are a number of ways that consumers can register, including via the internet (www.donotcall.gov.au), telephone (1300 792 958), fax and post. Registrations can take up to 30 days to become fully effective. Registrants can also remove their telephone or fax numbers from the Register through an online process².

The Act prohibits the making of an unsolicited telemarketing call or the sending of an unsolicited marketing fax to a number on the Register, subject to certain exceptions³.

Telemarketers and fax marketers can submit their calling lists to the Register operator, which then 'washes' the list against the Register to identify which numbers are registered. To access the washing service, telemarketers and fax marketers pay an annual subscription fee. The fees operate on a sliding scale, depending on the maximum number of Australian numbers to be washed in a 12 month period.

Since 1 July 2008, the full direct costs of operating the Register have been recovered from businesses engaging in telemarketing and fax marketing activities through these subscription fees. The ACMA undertakes regular cost-recovery reviews to determine the subscription fees, in line with the Australian Government's Cost Recovery Guidelines. The fees currently range from subscription type A, that is free for 500 numbers, through to subscription type H, that is \$90 000 for 100 000 000 numbers⁴.

'Telemarketing calls' and 'marketing faxes' are broadly defined in the Act. In general terms, a telemarketing call is a voice call made to an Australian number where one of the purposes of the call is to:

- 1) offer to supply, advertise, or promote a supplier of, goods or services
- 2) offer to supply, advertise, or promote a supplier of, land or an interest in land
- 3) offer to supply, advertise, or promote a provider of, a business opportunity or investment opportunity
- 4) solicit donations.

Similarly, a marketing fax is a fax sent to an Australian number where one of the purposes of the fax is the same as those listed above.

² See <https://www.donotcall.gov.au/remove-a-number.cfm>

³ See www.donotcall.gov.au for more information about the general operation of the Register.

⁴ See https://www.donotcall.gov.au/dncrtelem/sub_oiview.cfm. Multiple subscriptions can be purchased for telemarketers that wish to check more than 100 000 000 numbers.

Who is eligible to register?

Telephone numbers used primarily for private and domestic purposes are eligible to be registered. Emergency service telephone numbers and Government telephone numbers are also eligible.

All Australian fax numbers, including those operated primarily for commercial purposes, are eligible to be registered.

Impact of cost increase on telemarketing and fax marketing activity

Businesses engaging in telemarketing and fax marketing make an important contribution to Australia's growth and prosperity.

If access or maintenance costs of the Register increase, businesses engaging in telemarketing and fax marketing will naturally:

- 1) pass on this additional cost to consumers through additional fees and charges, reducing the competitiveness of their products and services; or
- 2) move to other potentially less efficient channels (such as social media and direct mail) to market their products (noting that these channels may be less or more intrusive and have less or more impact than a telephone call or fax).

In the past, the largest marketing industry body in Australia, the Association for Data-driven Marketing and Advertising (ADMA) has argued that a reduction in telemarketing and fax marketing may reduce market efficiency generally, although this argument has chiefly been made in relation to business to business marketing⁵.

Registration Period on the Register

The registration period for numbers on the Register was originally set at three years. This meant that numbers registered in 2007, would have needed to be re-registered before 2010 so as not to fall off the Register.

Since the commencement of the Register in 2007, the registration period has been extended three times. The most recent extension occurred on 9 April 2013, and registrations are now valid for eight years from the date the number was first registered. Numbers registered soon after the Register commenced in 2007 will now begin to expire from 31 May 2015.

The limited period of registration was originally intended to address concerns that an indefinite (or very long) period of registration may introduce inaccuracies into the Register.

Account-holders do not generally request the removal of their number from the Register when they give up their number. When a number is given-up, it will eventually be reissued

What is 'inaccuracy'?

The Register is a Government initiative that supports the choice of consumers to receive or not receive unsolicited telemarketing calls or marketing faxes. For the purposes of this discussion paper, an inaccuracy is considered to exist where a number is on the Register, but has not been registered by the current account holder.

⁵ See http://www.pc.gov.au/data/assets/pdf_file/0005/95612/sub009-attachment.pdf, a report prepared by Access Economics on behalf of ADMA.

to a new account holder after being in quarantine for a period⁶. As a result it is possible that there are inaccuracies on the Register.

Figure 1 illustrates how this might occur:

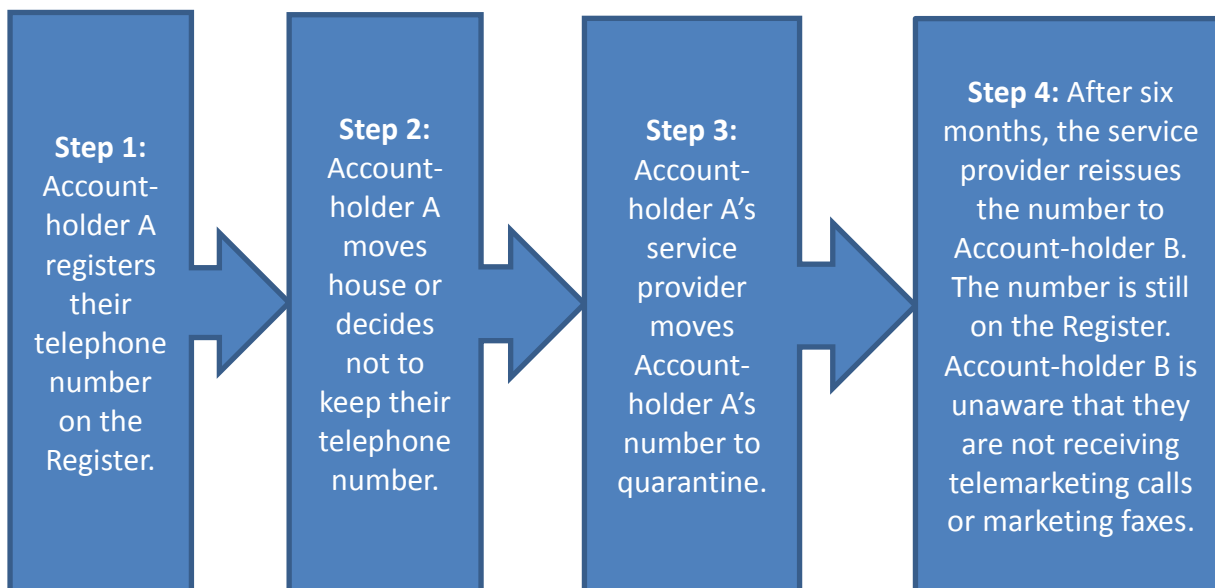


Figure 1: One example of how inaccuracies could be introduced into the Register.

The extent of inaccuracy on the Register has not been quantified. However, a baseline estimate has been made using Australian Bureau of Statistics house moving data⁷, which indicates the average Australian has lived at their current place of residence for at least five years. Nearly three in five people (58 per cent) lived in their current place of residence five years ago.

There are also a number of other factors⁸ which act to prevent inaccuracy or reduce the need for intervention:

- Local Number portability allows consumers to keep their geographic number (i.e. 02 6271 XXXX) when they switch providers. For example, a person changing telephone providers can keep their number when they

Numbering life cycle

All recovered numbers are eventually re-used – when a number is given up by an account holder, the number is quarantined for at least six months before being issued to a new account-holder. Re-assigning recovered numbers ensures that numbers are used efficiently, and reduces the need to introduce new numbers or add new digits to existing numbers.

⁶ See <http://www.acma.gov.au/Industry/Telco/Numbering/Managing-numbers/managing-numbers-numbering-i-acma> for more information on the numbering lifecycle.

⁷ See the ABS' Australian Social Trends, April 2013

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features30April+2013>

⁸ Some telecommunications providers have noted that the recent closure of some telecommunications providers could have increased the inaccuracy of the Register. However, it is likely that customers of these providers will have ported their numbers to new providers, which would not impact the accuracy of the Register.

move to a new provider⁹. In 2011-12, there were 627,160¹⁰ geographic numbers ported. There are 5 million landline numbers on the Register. Since the commencement of the Register, a total of 3.7 million geographic numbers have been ported. Access to Local Number Portability may mean that consumers are less likely to need to seek a new number when they swap providers, and this may therefore reduce the amount of numbers entering quarantine.

- Mobile Number Portability allows customers to retain their mobile telephone number when they change providers. For example, a person changing mobile telephone service providers can keep their number when they move to a new provider¹¹. In 2011-12, there were 2.6 million mobile numbers ported¹². There are currently 3.85 million mobile numbers on the Register. Since the commencement of the Register, a total of 8.9 million mobile numbers have been ported. Mobile Number Portability, like Local Number Portability, may mean that customers are less likely to need to seek a new number when they swap providers, and this may therefore reduce the quantity of numbers entering quarantine. However, it is worth noting that pre-paid numbers have a high turnover (that is, a customer may simply discard their number). Likewise, prepaid mobile services may also be passed on from person to person without anyone contacting the supplier. Hence, pre-paid mobile phone numbers on the Register have an increased likelihood of inaccuracy.
- Location portability allows individuals (and organisations) to retain their fixed line/landline number when they move¹³. This is possible when an individual is moving house within the same general geographic area (for example within Canberra or Gosford). Some providers do not allow location portability, which may limit the ability of consumers to access this service when they move. The ACMA has relaxed these rules for Voice over Internet Protocol (VoIP) services – in certain circumstances, individuals can acquire a VoIP number that does not relate to the geographic area that they live in (for example, in certain circumstances a person living in Canberra can be issued a Melbourne number – e.g. 03 9963 XXXX).
- Changing a place of residence does not normally require any change in the existing mobile numbers, so the accuracy of the mobile numbers on the register is not usually affected by moving. As of 15 July 2013, there were 3.85 million mobile phone numbers registered.

⁹ See <http://www.acma.gov.au/Citizen/Citizen-info/All-about-numbers/Keeping-your-number/local-number-portability-keeping-your-number-i-acma>

¹⁰ ACMA Communications Report 2011-12, p.23

¹¹ See <http://www.acma.gov.au/Industry/Telco/Numbering/Portability/mobile-number-portability-numbering-i-acma>

¹² ACMA Communications Report 2011-12, p.23

¹³ See <http://www.acma.gov.au/Citizen/Citizen-info/All-about-numbers/Keeping-your-number/local-number-portability-keeping-your-number-i-acma>

Consumer attitudes

Consumers have consistently reported that telemarketing, and unsolicited marketing in general, can cause them inconvenience and annoyance. A recent 2013 study by the Office of the Australian Information Commissioner (OAIC) has found that¹⁴:

- 56% of respondents felt annoyed from contact by unsolicited marketers.
- 39% of respondents concerned about how their details were obtained by the organisation contacting them.

Community attitudes also appear to be shifting. In 2013, 45% were annoyed by unsolicited marketing versus just 27% from a similar survey done by the OAIC in 2007. In the 2013 survey respondents were less likely to feel that unsolicited marketing was "a bit annoying, but mostly harmless" (11% in 2013 versus 23% in 2007). The 2013 survey also found that only 3% of respondents indicated that unsolicited marketing information either doesn't bother them and only 2% indicated that they enjoy reading it.

Previous consultation

Beyond statistical research, there have been a substantial number of public consultation processes on the operation of the Register. These include:

- the original 2005 Do Not Call Register discussion paper, that considered the need for the Register, and its fundamental characteristics¹⁵
- the 2008 Eligibility for Registration discussion paper, that considered whether all Australian numbers, including business numbers, should be permitted to be registered, and whether fax marketing should be regulated by the Act¹⁶
- the 2009 Senate Environment, Communications and the Arts Legislation Committee inquiry¹⁷ on the Do Not Call Register Legislation Amendment Bill 2009¹⁸ that considered, the eligibility rules for registration and whether fax marketing should be regulated under the Act
- the 2009 statutory review of the Act, that considered the broad operation of the Act and Register, and made recommendations for a range of improvements¹⁹.

Significant consultation has also occurred in relation to the whole-of-economy privacy regulation that applies in Australia. In 2008 the Australian Law Reform Commission (ALRC) conducted a comprehensive review of Australian privacy law and practice²⁰, that considered aspects of the Register and the regulation of direct marketing more broadly.

¹⁴ See <http://www.oaic.gov.au/privacy/privacy-resources/privacy-reports/oaic-community-attitudes-to-privacy-survey-research-report-2013>

¹⁵ See <http://www.apcontactcenters.com/artigos/Do%20Not%20Call%20Discussion%20Paper.pdf>

¹⁶ The paper is no longer available online, but can be provided on request.

¹⁷ See

www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=eca_ctte/completed_inquiries/2008-10/do_not_call_register/report/index.htm

¹⁸ See www.comlaw.gov.au/Details/C2009B00259

¹⁹ See http://www.communications.gov.au/telephone_services/do_not_call/statutory_review

²⁰ See <http://www.alrc.gov.au/publications/report-108>

The Government responded to the first tranche of ALRC recommendations in 2009²¹, and has implemented its response through the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*, with associated reforms due to commence from March 2014. The Government is considering its response to the second tranche of recommendations to the ALRC's report. More information on the privacy law reform process is available on the website of the OAIC²².

Senate Committee inquiry on the Do Not Call Register Legislation Amendment Bill 2009

In 2009, the Senate Standing Committee on Environment, Communications and the Arts considered the Do Not Call Register Legislation Amendment Bill 2009.²³ Although, the period of registration did not form part of the terms of reference, various submitters to the inquiry addressed the issue. Some submitters felt the registration period should be removed entirely so that numbers remain on the Register indefinitely, while other submitters argued that the registration period should be extended.

For example, Galexia Pty Ltd, which delivers specialist consulting on a range of issues including privacy, argued that *"... the Australian Do Not Call Register compares poorly with other jurisdictions. In the US the renewal requirement was dropped in 2007 and registration is now permanent. Registration is also permanent in India, Spain and the UK. A major problem with the renewal requirement is that it adds regulatory burden, complexity and expense to a system that is supposed to be simple and inexpensive... (the renewal) process will be very ineffective and inefficient, as it is unlikely any registered consumers will suddenly wish to receive telemarketing calls. (In any case, a consumer can remove their number from the Register at any time if they have a change of heart about telemarketing)... There is no evidence that any of the Do Not Call Registers in jurisdictions without renewals have become 'clogged' with obsolete information."*²⁴ In relation to Galexia's comment on the US and UK registers, both these models utilise 'cleansing' mechanisms to maintain their accuracy (for example, in the UK telecommunications providers provide disconnection data to the UK register to remove disconnected numbers).

The Senate committee recommended that the Department consider extending the period of registration in its statutory review of the Act, provided the practical difficulties of keeping the Register accurate could be overcome.

²¹ See the Government's response at <http://www.dpmc.gov.au/privacy/reforms.cfm>

²² See <http://www.oaic.gov.au/privacy/history-of-the-privacy-act>

²³ See http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Completed%20inquiries/2008-10/donotcallregister/index

²⁴ See Galexia's submission to the Do No Call Register Bill 2009 Senate Committee inquiry, 24 January 2010, pp. 5-6.

Do Not Call Register Act 2006 Statutory Review

In the Department's statutory review of the Act, submissions from the telemarketing and fax marketing industries did not support indefinite registration.

The ADMA stated that *"A situation where numbers can remain on the Register indefinitely would lead to the database being substantially out of date in only a short number of years. A registration period of three years is appropriate given the dynamism of telephone number ownership."*²⁵

The Australian Association of National Advertisers (AANA) stated that it supports the *"...three-year expiry period for registrations of telephone numbers. AANA considers that improved consent provisions and an education initiative will assist in ensuring the Register remains current."*²⁶

However, the majority of submissions supported a registration period longer than three years.

The Australian Communications Consumer Action Network (ACCAN) stated that the *"...three year registration period is unnecessary. In other jurisdictions (such as the UK²⁷ and USA), the registration periods have been removed, so that registration remains permanent. If the number is deactivated (for example when a person moves house) then the Register is notified and updated. There is no evidence of any problems with this system in other jurisdictions."*²⁸

The Citizen Credit Legal Centre (NSW) Inc stated that *"The registration period is a major inconvenience for citizens. Citizens who do not want to be contacted usually maintain that view for life. The registration must be permanent."*²⁹

²⁵ See ADMA's submission to the Do Not Call Register statutory review discussion paper 2009, page 4, www.archive.communications.gov.au/__data/assets/pdf_file/0006/123693/ADMA_main_submission.pdf

²⁶ See AANA's submission to the Do Not Call Register statutory review discussion paper 2009, page 1, [//www.archive.dbcde.gov.au/__data/assets/pdf_file/0004/123691/AANA_main_submission.pdf](http://www.archive.dbcde.gov.au/__data/assets/pdf_file/0004/123691/AANA_main_submission.pdf)

²⁷ For example, the UK's the Telephone Preference Service for Citizens, has a cleansing mechanism in place. See www.tpsonline.org.uk/tps/contactfaq.php

²⁸ ACCAN Submission to the DNCR Statutory Review 2009, p. 12.

²⁹ Citizen Credit Legal Centre (NSW) Inc Submission to the DNCR Statutory Review 2009, p. 4.

Maintaining the accuracy of the Do Not Call Register

The Department has considered what operational mechanisms could be implemented to maintain the accuracy of the Register. The objectives of any cleansing mechanism would be to:

- reduce the reliance on limited registration periods to maintain the accuracy of the Register
- remove numbers from the Register that have not been registered by the current account-holder of the number
- minimise any cross-subsidy between industry sectors (for example, from the telecommunications industry or from taxpayers to the telemarketing and fax marketing industries)
- minimise the cost on businesses engaging in telemarketing and fax marketing as far as possible.

To achieve these objectives, the Department has considered two broad options:

- 1) Requiring telecommunications service providers to collect and provide the necessary data to the Register operator
- 2) Making the Register operator an Integrated Public Number Database (IPND) user, so that it could use data from the IPND to remove numbers from the Register that have been reissued.

Examination of these broad options, in direct consultation with telecommunications service providers, the OAIC and ADMA, found that the collection of data by telecommunications service providers would be very costly, given the large number of service providers that would have to implement new systems.

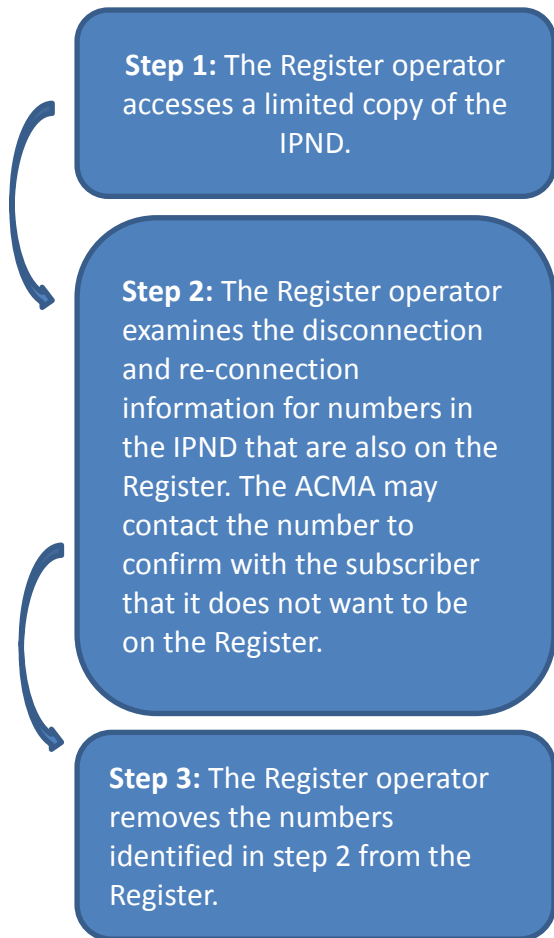
The option identified as offering the most effective cleansing mechanism was to use the IPND. Under the proposed model, the minimum amount of IPND data would be used by the Register operator to identify numbers on the Register that have been reissued. Figure 2 describes the proposed process at a high level.

The Register operator would first obtain approval from the ACMA to obtain a limited set of IPND data. The Register operator would examine the disconnection and connection dates of

What is the IPND?

The IPND is a centralised database containing records of all Australian telephone numbers and associated customer details. It contains subscriber details for over 59.5 million connected telephone services. The IPND is managed by Telstra, as a condition of its carrier licence. Telephone companies that issue telephone numbers are required to provide customer information to the IPND Manager to be included in the IPND. The primary purpose of the IPND is to provide subscriber information to 'critical services', including the emergency services through the Triple Zero emergency call service.

the IPND record for each number on the Register. This process would be used to determine which numbers had entered quarantine. Depending on the difference between the connection and disconnection dates, the Register operator will determine whether the number in question has been reissued, and can therefore be removed from the Register.



This process of utilising the IPND to ‘cleanse’ the Register would increase the cost of operating the Register. The cleansing mechanism is a direct operating cost of the Register and, as such, would be recovered from industry consistent with the Australian Government’s Cost Recovery Guidelines. This cost may be substantial – for example preliminary estimates indicate that a cleansing mechanism could increase washing fees by 20%³⁰. If an in-principle decision is made to use the IPND, the impact on fees would be determined and industry consulted on potential increases at that time.

The use of the IPND for this process was tested in the Department’s IPND Review³¹ and was broadly supported by Communications Alliance (the peak body representing the communications industry) and the ADMA. However, the ADMA do not support any increase in fees to introduce a cleansing mechanism.

Figure 2: The preferred process using IPND information to identify and remove inaccuracies from the Register

³⁰ This estimate is based on a number of assumptions which are subject to change – for example IPND access fees. It is noted that this estimate is very sensitive to cost fluctuations. This estimate is for discussion purposes only and respondents should not rely on this estimate to make commercial decisions.

³¹ See http://www.communications.gov.au/telephone_services/telephone_numbering/integrated_public_number_database_ipnd

Options for the registration period on the Register

This discussion paper is seeking community views on the optimal period of registration for numbers on the Register.

Public comment is sought on four options:

- 1) Reduce the period of registration to three years
- 2) Retain the current eight year registration period
- 3) Extend the registration period to indefinite
- 4) Remove the need to register

In addition, for options one two and three, the Department is also considering the introduction of a cleansing mechanism, to improve the accuracy of the Register (see page 20).

Submissions should identify the preferred option and provide comments on why the other options are not preferred. Alternative approaches are also welcomed. Discussion questions have been included against each option. Submissions are welcome to address these questions or raise other issues as desired.

Option 1: Reduce the period of registration to three years

Under this option, the registration period for numbers on the Register would be reduced to three years. Account-holders would need to re-register their numbers every three years to opt out of telemarketing calls, and marketing faxes.

Impact on consumers

Unwanted telemarketing and fax marketing places 'costs' on registrants in terms of inconvenience, lost time and privacy. While the cost may be small for individual registrants, across the economy the cost may be substantial. The need to re-register may also impact disproportionately on vulnerable consumers, such as registrants with a disability and older people.

To assist consumers, it is likely that the ACMA would need to undertake an ongoing education campaign to inform and remind account-holders about the need to re-register. Account-holders who receive telemarketing calls or marketing faxes after the registration of their number(s) has lapsed may complain to the ACMA in the mistaken belief that their number(s) are still on the Register. Some account-holders may remain unaware of the need to re-register their number(s), and may begin to receive unsolicited telemarketing calls or marketing faxes.

Impact on industry

This option would involve no additional cost to businesses engaging in telemarketing or fax marketing.

Reverting to a three year registration period would address industry concerns about inaccuracies with the Register, as account-holders would be required to re-register their numbers every three years using their latest details.

There may be more numbers that businesses engaging in telemarketing and fax marketing are permitted to call if account-holders do not re-register their numbers.

Questions

- 1) Would a three year registration period negatively affect consumers? How? Would this option disproportionately impact on vulnerable consumers? How?
- 2) What is the likely impact on businesses engaging in telemarketing and fax marketing of a three year registration period? What would be the impact on other industries that use telemarketing or fax marketing, or compete in the broader direct marketing market?
- 3) What would the compliance costs to businesses engaged in telemarketing or fax marketing be under this option?

Option 2: Retain the current eight year registration period

Option 2 examines the current eight year registration period. This option reflects the current situation. Under this option, the eight year registration period would be maintained. Account-holders would need to re-register their number every eight years to keep them on the Register.

Impact on consumers

This option would provide account-holders with a longer term registration period, avoiding the need to re-register as often. While the registration period is longer, account-holders would still need to go through the process of re-registering their numbers every eight years. As noted in Option 1 above, unwanted telemarketing calls and marketing faxes place 'costs' on registrants in terms of inconvenience, lost time and privacy.

A longer registration period may mean consumers are less likely to remember the need to re-register, placing more importance on an effective education campaign to remind account-holders of the need to re-register their numbers. In addition, it may mean that contact details are dated and inaccurate (for example discontinued email addresses), and may limit the ACMA's contact options.

Some account-holders may, nonetheless, remain unaware of the need to re-register their numbers. Account-holders, who receive telemarketing calls or marketing faxes after the

registration of their number(s) has lapsed, may complain to the ACMA in the mistaken belief that their number(s) are still on the Register.

There is a possibility that numbers could have been listed on the Register by a previous account-holder, without the new account-holder having exercised their preference not to receive marketing calls and faxes. Without a cleansing mechanism, these numbers would not be automatically removed until the registration is due to expire. As a result, some consumers who are open to receiving marketing calls and faxes may miss out on receiving information about new products and services.

Impact on industry

This option would involve no additional cost to businesses engaging in telemarketing or fax marketing.

The re-registration process would remain to provide a check on the accuracy of the Register, albeit every eight years. An eight year registration period is likely to produce more inaccuracies on the Register than would be the case for a shorter registration period. This could be addressed through the introduction of a cleansing mechanism, discussed below.

As with Option 1, the need to re-register could potentially provide businesses engaging in telemarketing and fax marketing with more numbers to contact if account-holders did not re-register their number(s).

Questions

- 4) Is there a significant difference between the eight year registration period and indefinite registration, from the perspective of:
 - a. account-holders registering their numbers?
 - b. the telemarketing and fax marketing industries washing numbers against the Register?
- 5) What would the compliance costs to businesses engaged in telemarketing or fax marketing be under this option?

Option 3: Extend the registration period to indefinite

Option 3 examines removing the registration period so that registration is indefinite. Once registered, a number would remain on the Register, unless:

- the relevant account-holder asked the ACMA to remove the registered number
- the ACMA removed a number from the Register because it was not eligible to be registered.

If a cleansing mechanism was introduced, this would be a further way in which a number might be removed from the Register.

Impact on consumers

Account-holders would not need to re-register their numbers periodically, which would benefit registrants. If an account-holder does change their mind about marketing calls and faxes, they can remove their number(s) from the Register at any time.

As with Option 2, there is a possibility that numbers registered by a previous account-holder could be listed on the Register without the new account-holder having exercised their preference not to receive marketing calls and faxes. This may impact individual account-holders as they may wish to receive marketing calls and faxes and may be unaware their number is on the Register. There is more potential for this to occur under this option, as numbers do not need to be re-registered, but remain on the Register indefinitely.

Impact on industry

There would be no additional costs to industry. A potential benefit is that indefinite registration of numbers reduces the possibility that they will contact a person that does not want to be contacted and is unlikely to make a purchase. Instead industry would be more likely to contact people who are open to receiving unsolicited telemarketing calls and marketing faxes. This would allow industry to be more efficient and cost-effective, as fewer resources would be wasted contacting people uninterested in receiving telemarketing calls and marketing faxes.

However, without a check on accuracy, it is likely to decrease over time. This, in turn, may limit the numbers that can be contacted.

Questions

- 6) To what degree do consumers want to receive unsolicited telemarketing calls and marketing faxes?
- 7) What impact would missing out on receiving telemarketing calls or marketing faxes have on:
 - a. industry and the economy as a whole ?
 - b. consumers that are open to receiving telemarketing calls and marketing faxes?
- 8) What would the compliance costs to businesses engaged in telemarketing or fax marketing be under this option?

Option 4: Remove the need to register

A further option being considered as part of this discussion paper is an option that would remove the need to register altogether. The number of registrations is at approximately 9 million including landlines, mobiles and fax numbers. At the current rate of registration (on average approximately 1 million new numbers are registered every year³²), it is conceivable that in the next decade, all, or at least the vast majority of, households in Australia will have expressed a preference not to receive unsolicited telemarketing calls or marketing faxes.

In this case, it may be appropriate to redesign the Register and align it with the *Spam Act 2003* (the Spam Act). The Spam Act prohibits the sending of a commercial electronic message, unless the recipient has consented to the sending of the message³³.

No registration (or re-registration) would be required on a central database. Instead, businesses engaging in telemarketing and fax marketing would be responsible for maintaining their own up-to-date records of who has opted-in to (or has subsequently opted-out of) receiving their marketing calls or faxes. Similar exemptions would apply to those that exist in the Spam Act, so an organisation would still be able to contact existing customers for marketing purposes. Consumers would be able to withdraw their (express or implied) consent to receive marketing calls and faxes.

This option would be a substantial departure from the current arrangements, and additional consultation would need to occur if this were the preferred option.

Impact on consumers

Consumers would not receive telemarketing calls or marketing faxes unless they consent by opting-in. This would be consistent with the process that applies under the Spam Act. There would be no need for Consumers to register their preference not to receive marketing calls or faxes. Consumers may choose to opt-in to the direct marketing that they want to receive, rather than a blanket opt-out on all marketing, allowing consumers to tailor their choice to meet their individual needs. This could encourage marketers to better target their material.

Consumers who wish to receive telemarketing calls or marketing faxes would need to opt-in to telemarketing and fax marketing from specific organisations which may limit the variety of telemarketing calls or marketing faxes they receive. It may reduce the amount of information available to consumers about new products and services, as marketing calls and faxes are limited to circumstances where there is an existing relationship.

Impact on industry

³² See <http://www.acma.gov.au/Industry/Marketers/Do-not-call-register/Telemarketing-standard/do-not-call-register-statistics>.

³³ See http://www.communications.gov.au/online_safety_and_security/spam for more information.

This option would decrease the cost to businesses engaging in telemarketing and fax marketing as there would be no need to pay fees to access the Register. Rather, businesses would be required to maintain accurate internal lists to substantiate their claim that they have express or implied consent to make telemarketing calls or send marketing faxes to a particular number. This is a requirement of the current arrangements for organisations covered by the *Privacy Act 1988*, or organisations relying on the consent provisions in the *Do Not Call Register Act 2006*.

Businesses relying on telemarketing and fax marketing would likely suffer from loss of revenue, which could result in job losses and reduced economic activity (noting that businesses may turn to competing, and potentially less intrusive, marketing channels in the medium term with a view to offsetting those losses). There may also be a flow-on impact on to the broader economy because consumers may be less able to take advantage of opportunities they would otherwise become aware of through telemarketing/fax marketing.

Further, this option may create a barrier to entry by favouring those businesses currently operating in a market that have an existing relationship with customers over new entrants. These new entrants to a market would be unable to make or send marketing calls and faxes to promote goods and services and would need to rely on other advertising channels.

A potential benefit is that removing the Register and replacing it with an opt-in scheme would reduce the possibility that businesses will contact a person that does not want to be contacted, and is unlikely to make a purchase. Instead, business engaging in telemarketing and fax marketing would be more likely to contact people who are open to receiving telemarketing calls or marketing faxes. This would allow industry to be more efficient and cost-effective, as fewer resources would be wasted contacting people uninterested in receiving telemarketing calls and marketing faxes.

Questions

- 9) What would be the impact of regulating telemarketing and fax marketing in the same way as commercial electronic mail?
- 10) What would be the flow on impact on the broader economy? What indicators should government use to quantify this?
- 11) Is the proportion of households with one or more numbers on the Register a good indicator of consumers' preferences in relation to telemarketing and fax marketing generally? Why/why not?
- 12) What would the compliance costs to businesses engaged in telemarketing or fax marketing be under this option?

Cleansing Mechanism

A cleansing mechanism, funded by businesses engaging in telemarketing and fax marketing, could be introduced. A cleansing mechanism could apply to Options 1, 2, and 3, to keep the Register up-to date.

Impact on consumers

Account-holders would still need to re-register periodically with Options 1 or 2 to keep them on the Register.

The introduction of a cleansing mechanism would improve the accuracy of the Register, aligning it more closely with the express preference of registrants. Account-holders could still ask the ACMA to remove their number at any time.

A cleansing mechanism would ensure the accuracy of the Register, aligning it more closely with the express preference of registrants. However, businesses are likely to pass on to consumers, the cost of cleansing numbers against the Register.

Impact on industry

The introduction of a cleansing mechanism would result in an increase in the cost for businesses engaging in telemarketing and fax marketing to access the Register. “Washing fees” would increase to include the additional costs associated with access to the IPND. There is a possibility that businesses may pass on these additional costs to consumers.

This option would address the issue of the accuracy of the Register, through the introduction of a cleansing mechanism using IPND data and address concerns about the Register being out-of-date.

There may be more numbers available to businesses engaging in telemarketing and fax marketing, by removing re-allocated numbers from the Register.

A potential benefit of a cleansing mechanism is that businesses engaging in the telemarketing and fax marketing industries reduce the possibility that they will contact a person who does not want to be contacted and is unlikely to make a purchase.

Please note that this cleansing mechanism is based on the current IPND system which is currently under review. Should a cleansing mechanism be the preferred option by stakeholders, further consultation may need to occur once the outcomes of the IPND review have crystallised.

Questions

- 13) Does industry support the introduction of a cleansing mechanism which would result in an increase to washing fees?
- 14) Is the use of the IPND the best way to cleanse the Register? What other options are there that meet the objectives of a cleansing mechanism?
- 15) What would the compliance costs to businesses engaged in telemarketing or fax marketing be under this option?

Attachment A: List of questions

Option 1) Reduce the period of registration to three years

- 1) Would a three year registration period negatively affect consumers? How? Would this option disproportionately impact on vulnerable consumers? How?
- 2) What is the likely impact on businesses engaging in telemarketing and fax marketing of a three year registration period? What would be the impact on other industries that use telemarketing or fax marketing, or compete in the broader direct marketing market?
- 3) What would the compliance costs to businesses engaged in telemarketing or fax marketing be under this option?

Option 2) Retain the current eight year registration period

- 4) Is there a significant difference between the eight year registration period and indefinite registration, from the perspective of:
 - a. account-holders registering their numbers?
 - b. the telemarketing and fax marketing industries washing numbers against the Register?
- 5) What would the compliance costs to businesses engaged in telemarketing or fax marketing be under this option?

Option 3) Extend the registration period to indefinite

- 6) To what degree do consumers want to receive unsolicited telemarketing calls and marketing faxes?
- 7) What impact would missing out on receiving telemarketing calls or marketing faxes have on:
 - a. industry and the economy as a whole?
 - b. consumers that are open to receiving telemarketing calls and marketing faxes?
- 8) What would the compliance costs to businesses engaged in telemarketing or fax marketing be under this option?

Option 4) Remove the need to register

- 9) What would be the impact of regulating telemarketing and fax marketing in the same way as commercial electronic mail?

- 10) What would be the flow on impact on the broader economy? What indicators should government use to quantify this?
- 11) Is the proportion of households with one or more numbers on the Register a good indicator of consumers' preferences in relation to telemarketing and fax marketing generally? Why/why not?
- 12) What would the compliance costs to businesses engaged in telemarketing or fax marketing be under this option?

Cleansing mechanism

- 13) Does industry support the introduction of a cleansing mechanism which would result in an increase to washing fees?
- 14) Is the use of the IPND the best way to cleanse the Register? What other options are there that meet the objectives of a cleansing mechanism?
- 15) What would the compliance costs to businesses engaged in telemarketing or fax marketing be under this option?