



**Australian
Privacy
Foundation**

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11 October 2017

The Manager
Unsolicited Communications Strategic Projects
Australian Communications and Media Authority
PO Box 13112
Law Courts
MELBOURNE VIC 8010

Dear Manager

**Re: Potential for Industry Self-Regulation of the Integrated Number Base,
the Do Not Call Register and Commercial Electronic Messages**

Introduction:

The Australian Privacy Foundation (**APF**) appreciates this opportunity to provide comments on the ACMA's Discussion Paper, *Potential for industry self-regulation of the Integrated Public Number Base, the Do Not Call Register and commercial electronic messages*.¹ We appreciate that the reason all three areas of discussion are grouped together in this Discussion Paper is that they were all identified by the Government as areas that the ACMA could consider for potential self regulation by industry.²

All three areas (IPND, DNCR and Spam) deal with personal information and, in some cases, quite sensitive personal information. And in all three, the interests of consumers and the industry do not coincide. It is therefore inappropriate for all of the three areas to come under a self-regulatory framework. Indeed, under the ACMA's own 'Assessment Framework and Principles', industry self-regulation 'needs a strong alignment between industry interests and the stated public interest or value outcome',³ an alignment clearly not present in any of the three areas.

Indeed, there is growing concern among Australians for privacy protection. The most recent survey by the Office of Australian Information Commissioner records that, of those surveyed, forty percent are not comfortable with the use of their personal details for research purposes and only one percent of those surveyed do not mind receiving unsolicited marketing information from organisations they have not dealt with before.⁴

Integrated Number Data Base (IPND):

¹ Released by the Australian Communications and Media Authority (ACMA) 30 October 2017.

² Department of Communications, *Review of the Australian Communications and Media Authority*, May 2017, Recommendation 6.

³ Discussion Paper, Appendix B, Table 6 and Figure 1.

⁴ Office of the Australian Information Commissioner, *Australian Community Attitudes to Privacy Survey 2017*, May 2017, p. ii.

Based on the ACMA's own regulatory principles, the IPND is particularly inappropriate to come under a self-regulatory regime. Under the IPND regime, no customer consent is needed for the collection of potentially highly sensitive personal information. Instead, at law, every carriage service provider must give the maintainer of the IPND (now Telstra) every public number of its customers, including numbers for both fixed line and mobile services), many of which are not listed (mobile numbers are not publicly listed unless requested by the customer) and many of which are highly sensitive. IPND data also includes, apart from a customers name and numbers, their services as well as billing address.⁵

The IPND's purpose was originally simply to provide emergency services and law enforcement agencies with data to assist them with strictly limited purposes. While there has been some 'function creep' including access to the data for research, strict conditions and safeguards still apply.

Under its licence conditions, enforceable by the ACMA,⁶ Telstra is the operator of the IPND⁷. Additional regulatory oversight is provided by the industry code on the IPND⁸ under which the TIO can handle complaints and which the ACMA can enforce.

Do Not Call Register (DNCR)

This register is very different character and purpose to the IPND. Individuals voluntarily provide their home, mobile and/or fax numbers to the ACMA, in order not to receive unsolicited telemarketing calls. (exemptions from the do-not-call requirements include charities, educational institutions, government bodies and political parties). While the actual operation of the DNCR has been outsourced, the ACMA is still responsible for functions under the *Do Not Call Register Act 2006*, including:

- Monitoring and enforcing compliance with the Do Not Call Register Act and the two industry standards.
- Handling complaints and enquiries (the outsourced operator receives complaints and enquiries in the first instance and escalates them to the ACMA as required).
- Administering cost recovery arrangements.
- Making instruments and standards, and registering industry codes.⁹
- Conducting education campaigns, conducting/commissioning research and international liaison.

Under recent changes to the DNCR, the names of individuals who have 'opted out' of receiving unsolicited telemarketing remain on the register indefinitely or until the individual requests that their name be removed. There is therefore a good argument that the DNCR be 'washed' against the more up-to-date IPND data, but only under the very strictest conditions of security.

While there may be some arguments for sharing of the technical management of IPND and DNCR data, these are likely to be heavily outweighed by privacy and security concerns. If there were to be any shared technical capability, the two databases must remain completely separate. Further, there must continue to be clear independent regulatory oversight by a body with power to enforce compliance and an independent complaints handling mechanism.

Oversight of the Spam Act 2003

The third area for discussion – oversight of the Spam Act – does not involve a centralized database. Instead, each organisation maintains its own database with strict rules about sending unsolicited commercial electronic messages (spam). The Act operates on an opt-in basis (i.e. unsolicited commercial messages cannot be sent unless individuals have consented or consent can be

⁵ *Telecommunications Act 1997*, Schedule 2, Part 4.

⁶ *Telecommunications Act 1997*, s. 69.

⁷ *Carrier Licence conditions (Telstra Corporation Limited) Declaration 1997*, Licence condition 10.

⁸ C 555:2017

⁹ There are currently no registered codes.

'inferred'.) Further each message must contain an 'opt out' facility. Previously, a registered Code was in force, but has since been withdrawn. The ACMA, however, maintains strong regulatory oversight, with responsibilities to monitor and enforce compliance with the Act and conduct educational campaigns on its provisions, and the TIO still has jurisdiction to handle complaints under the Act. Given the clear privacy implications of the Act, it should remain under the oversight and control of the ACMA.

Conclusion

The Discussion Paper's Appendix B – Assessment Framework and Principles – provides the framework in which to determine whether or to what extent, the IPND, the DNCR and the Spam Act should move towards industry self regulation. Using their framework - assessing the risks and harms as against the benefit - it is clear that all three areas raise serious issues of privacy. Given the increasing emphasis globally on privacy protection, and the growing concern of Australians on protection of their privacy, it would be entirely inappropriate to move any of the three areas outside of their existing regulatory frameworks.

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

TEXT

Thank you for your consideration.

A handwritten signature in black ink, appearing to read 'D. Vaile', with a stylized, cursive script.

Yours sincerely
David Vaile, Chair
For the APF Board
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Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, SubCommittees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by Patrons The Hon Michael Kirby AC CMG and The Hon Elizabeth Evatt AC, and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <http://www.privacy.org.au/Papers/>
- Resources <http://www.privacy.org.au/Resources/>
- Media <http://www.privacy.org.au/Media/>
- Current Board Members <http://www.privacy.org.au/About/Contacts.html>
- Patron and Advisory Panel <http://www.privacy.org.au/About/AdvisoryPanel.html>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87) <http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Access Card (2006-07) http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html
- The Media (2007-) <http://www.privacy.org.au/Campaigns/Media/>