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**Draft Telecommunications (Do Not Call Register)
(Telemarketing and Research Calls) Industry
Standard Variation 2007**

Proposed 'Sunday call' variation

**Australian Privacy Foundation submission to
Australian Communications and Media Authority**

May 2007

The Australian Privacy Foundation

The Australian Privacy Foundation (APF) is the leading non-governmental organisation dedicated to protecting the privacy rights of Australians. We aim to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians.

Since 1987 the Australian Privacy Foundation has led the defence of the rights of individuals to control their personal information and to be free of excessive intrusions. We use the Australian Privacy Charter as a benchmark against which laws, regulations and privacy invasive initiatives can be assessed.

For further information about the organisation, see www.privacy.org.au

Submission

The Australian Privacy Foundation opposes any variation to the Telemarketing Standard to allow research calls to be made on Sundays.

To the extent that any concession is made, it should be strictly limited to research which complies with the Market and Social Research Privacy Principles and Guidelines (AMSRO Privacy Code – as approved by the Privacy Commissioner under the Privacy Act 1988 – see <http://www.amro.com.au/index.cfm?p=2403>)

ACMA held extensive consultations last year on the original Standard which gave an opportunity for all the arguments for and against a Sunday ban to be canvassed. Following those consultations, ACMA decided on balance not to allow Sunday calls. The Discussion paper presents no new arguments or evidence to support a variation. It seems clear that the only real 'difference' is that the major political parties have belatedly realised that the Standard will limit political polling and canvassing. The market and survey research industry also want the variation, but they will have made their case last time round and had it rejected, on a balance of interests.

The Discussion Paper is disappointing in that it highlights the public interest in 'genuine' medical and social 'research' without making it clear that the term 'research' is defined in the Standard (and legislation) to also cover political polling and canvassing, and makes no distinction between research which follows ethical professional standards (the AMSRO Privacy Code) and 'so-called' research which does not. Unfortunately both the government in the Do Not Call Legislation and ACMA in its Standard have missed the opportunity to make this distinction, which would have allowed for genuine research to be treated differently. However, it is not too late to make this distinction in the context of this proposed variation.

It seems likely that any and all types of call are equally unwelcome in terms of intrusion, and we believe there would be overwhelming community support for the blanket ban on Sunday calls.

However, calls from 'researchers' who do not meet the standards set out in the AMSRO Code involve an additional privacy intrusion in that they commonly collect personal information which is fed back to the client for use in subsequent marketing or canvassing. There is no justification for a concession on Sunday calling for calls of this nature.

To the extent that a case can be made for the public interest in 'accurate and high quality' survey research depending on an ability to reach people on Sundays, that objective could be satisfied by a concession limited to research which complies with the AMSRO Privacy Code, which guarantees that identifiable personal information does not reach the research client. Householders will still resent the intrusion of such calls, but could at least be re-assured that the intrusion was not compounded by the potential secondary use of personal information.

We strongly urge ACMA to resist the self-interested arguments of politicians, political parties and less ethical 'research' businesses in favour of varying the Standard. While we would prefer to see no variation, we urge ACMA to at least ensure that any concession is strictly limited to ethical research complying with the recognised professional standards set in the AMSRO Privacy Code.

We assume that ACMA will have specifically consulted with the Office of the Privacy Commissioner about the proposed variation. We would find it surprising if the Privacy Commissioner did not support the use of the AMSRO Privacy Code, approved by her predecessor, as an important safeguard that could play a key role in the outcome of this policy issue.