



**Australian
Privacy
Foundation**

<http://www.privacy.org.au>

Secretary@privacy.org.au

<http://www.privacy.org.au/About/Contacts.html>

30 November 2014

Jennifer Eddie
Director – Performance Audit Services Group
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

By email: acmaaudit@anao.gov.au

Dear Jennifer,

Re: Performance audit of ACMA's regulation of unsolicited communications

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached. The Foundation is the nation's premier civil society organisation concerned with privacy. It is a non-partisan body that draws on expertise regarding law, business, technologies and public administration. It has provided invited and independent advice to parliamentary inquiries, law reform commissions and other bodies over the past two decades.

This submission by the Australian Privacy Foundation responds to the Audit Office's *Performance Audit of the Australian Communication and Media Authority's Regulation of Unsolicited Communications*.

The Foundation strongly supports the purpose of the Do Not Call Register and contends that the effectiveness of the register relies on regular and strong enforcement by ACMA. We contend that there is strong evidence to support the contention that regular Australians do not want unsolicited communications (by whatever means). The Government (and in particular the Attorney-General) has recently emphasised the importance of traditional freedoms. A key freedom is the freedom from interference, a freedom from inappropriate intrusion, interruption, restriction and observation. That freedom is privacy.

In answer to your questions:

1. Overall, what are your views on the ACMA's regulation of unsolicited communications?

Overall, we are concerned that there are insufficient regulatory enforcement mechanisms in place currently by ACMA to ensure compliance with the Do Not Call Register. A review of the ACMA website revealed no published reports on investigations and/or enforcement action in relation to breaches with unsolicited communications. There are two published media releases on the Do Not Call website. The anecdotal evidence is that there are continuing breaches of the Do Not Call register and it would appear that the enforcement action is insufficient relating to the extent of the problem.

We believe there are three issues that may be preventing better and more targeted enforcement action:

- a. There is no research available on the extent of the problem. It is very difficult to tailor effective enforcement action without a better understanding of the problem
- b. Many individuals still do not know about the register, forget about it or do not complain when breaches occur.
- c. There are continued problems with overseas callers that are involved in scams/marketing

We note that ACMA has been involved in litigation in the past regarding the enforcement of the Spam Act and support this. However, spam continues to be ubiquitous problem in Australia and we contend that ongoing strong enforcement is required.

2. *If you have required information on the ACMA's compliance activities or the legal requirements for marketing by phone or email, have you found this information to be clear and readily available?*

The Foundation has not requested this information.

3. *What is your opinion of the ACMA's communication with stakeholders and the Australian community?*

We contend that ACMA's communication with stakeholders could be vastly improved. There are no regular consultations scheduled with stakeholders to discuss issues regarding unsolicited communications. These consultations should be occurring regularly to ensure issues are considered when they arise. It would also give ACMA the opportunity to update stakeholders on its enforcement activities.

The consultation with the Australian community also needs to be improved. Many individuals in Australia still are not even aware that the register exists. Many individuals do not know how and where to complain. Every individual who registers should be given a quick guide to the register and how to complain.

Representatives of the Foundation would be pleased to discuss this submission with you and address particular aspects in more detail.

Thank you for your consideration.

Yours sincerely

Australian Privacy Foundation

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 are 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/>