



**Australian
Privacy
Foundation**

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

15 January 2014

The Director
Cloud Computing & Privacy
Department of Communications
GPO Box 2154
Canberra ACT 2601

By email: DNC.consultation@communications.gov.au

Dear Director,

Re: Optimal period of registration on the Do Not Call Register

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

This submission by the Australian Privacy Foundation responds to the Department of Communications December 2013 discussion paper regarding the optimal period of registration on the Do Not Call Register under the *Do Not Call Register Act 2006* (Cth).

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.

The Foundation endorses **Option 4** (i.e. freedom from interference without a requirement to register) on the basis of practicality and principle.

Data cited by the Department in the discussion paper demonstrates that there is a strong, consistent desire by most Australian households not to receive unsolicited electronic communications, whether to domestic telephones, fax machines, mobile phones or other devices that are increasingly being embraced through convergence. The discussion paper notes the forecast that most consumers will have chosen to include themselves on the Register within a decade. It also notes that the Register is growing by around 1 million numbers per year. That growth is real and is not for example determined by churn from one service provider to another (given number portability). It is consistent with reported figures for consumers going ex-directory, i.e. paying a premium for silent numbers.

Consumer support for the Register reflects a desire not to be bothered by unsolicited messages. That desire has been consistently voiced by individual consumers and consumer advocates in different fora. It is consistent with the attitude of consumers in comparable nations such as the United States. (Importantly, the discussion paper notes that the US has moved to indefinite registration rather than a three or five year period.) It also consistent with support by consumers for restrictions on unsolicited commercial email and short message service (SMS) communications,

evident in consultations conducted by the Department, by the ACMA and parliamentary committee hearings.

The Government 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.

The Do Not Call regime enshrines that freedom. It recognises that Australians want to choose their relationships with business enterprises and other entities. In essence, they do not want to be bothered by unsolicited electronic communications. They want to be able to determine which businesses enter their private sphere, on the basis that the consumer has invited that contact. They do not want telemarketers to deprive them of that choice.

Option 4 has a basis in principle because it enshrines consumer freedom of choice. It enshrines privacy. People who do not wish to be bothered by unsolicited communications will not have to endure that telemarketing. Option 4 does not preclude all telemarketing: it merely rationalises the existing arrangements. People who wish to receive telemarketing messages – in person, by fax, by robocall – are free to do so by arrangement with particular marketers. That arrangement means the messages are solicited.

Option 4 has a basis in practice because it means consumers do not need to keep re-registering in order to achieve their desired freedom from interference. It places the onus on marketers to move to best practice and obviates the need to address concerns regarding washing of numbers. The default position is that telemarketing will not take place unless that communication has been invited by the consumer on an enterprise basis (i.e. all callers are not given a blank cheque) or the consumer has signalled willingness to receive communications from several entities by providing the number to an intermediary.

Will adoption of Option 4 have a disproportionate impact on the overall economy and on telemarketers? The Foundation has not sighted data that authoritatively demonstrates adoption of an 'opt-in' regime (i.e. Option 4) will negatively impact Australian economic growth or consumer opportunities. Option 4 is instead a mechanism for encouraging best practice among telemarketers. The Foundation concurs with the Department's statement that cold calling is merely one way to engage with consumers: there are other (and better) channels for building relationships with consumers.

Forecasts about employment adjustment in the telemarketing sector are problematical. The Foundation for example notes the comment in a preceding submission that Australian government agencies, commercial enterprises and nonprofit bodies continue to offshore their callcentre operations. Reduced employment opportunities are likely to be more of a function of that offshoring than of Option 4. Best-practice telemarketers will benefit from Option 4, which represents a policy 'nudge' to foster high performance in engagement by marketers with consumers.

Option 4 is a practical and forward-looking response that will be supported by Australian consumers and should be endorsed by business and government as best practice. In the absence of that option the Foundation urges the Government to adopt Option 3.

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

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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/>