

Explanatory Statement

Issued by the authority of the Australian Communications and Media Authority
TELECOMMUNICATIONS (DO NOT CALL REGISTER) (TELEMARKETING AND RESEARCH CALLS) INDUSTRY STANDARD VARIATION 2007 (NO. 1)

Telecommunications Act 1997

Legislative Basis

Under section 130 of the *Telecommunications Act 1997* (the Act) the Australian Communications and Media Authority (ACMA) may, by written instrument, vary an industry standard that applies to participants in a particular section of the telemarketing industry if it is satisfied that it is necessary or convenient to do so to:

- (a) provide appropriate community safeguards in relation to one or more matters relating to the telecommunications, e-marketing or telemarketing activities, as the case may be, of those participants; and
- (b) otherwise regulate adequately those participants in relation to one or more matters relating to the telecommunications, e-marketing or telemarketing activities, as the case may be, of those participants.

Background

On 22 March 2007, ACMA made the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* (the Standard). ACMA made the Standard under subsection 125A of the Act, which required ACMA to determine a standard that, amongst other things, restricted the hours and/or days during which telemarketing calls may be made or be attempted to be made.

Under the Standard, telemarketing calls (including research calls) may not be made on a Sunday without the prior consent of the relevant telephone account-holder, or a nominee of the relevant telephone account-holder. Telemarketing calls on Saturdays (not including a public holiday specified in the Standard) are prohibited before 9am and after 5pm.

On 4 April 2007, the Minister for Communications, Information Technology and the Arts, acting pursuant to the power conferred by section 14 of the *Australian Communications and Media Authority Act 2005*, made the *Australian Communications and Media Authority (Telemarketing Industry Standard) Direction No. 1 of 2007* (the Direction). Under the Direction, ACMA must consider whether to exercise its power in section 130 of the Act to vary the Standard so as to:

- (a) remove the prohibition on making, or attempting to make, a research call at any time on a Sunday; and
- (b) include a prohibition on making, or attempting to make, a research call on a Sunday at the same times as a research call is prohibited on a Saturday.

When ACMA considers whether to exercise its power under section 130, ACMA must have regard to the important public benefit derived from accurate and high-quality research, and the likely impact that prohibiting research calls on Sundays would have on the collection of accurate and high-quality research.

If as a result of the Direction, ACMA exercises its power to vary the Standard, the variation must commence at the same time as Part 2 of the *Do Not Call Register Act 2006*, which will be 31 May 2007.

Consultation

On 20 April 2007, in accordance with section 132 of the Act, ACMA released for public comment the discussion paper *Consideration of whether to remove the prohibition on making Research Calls on Sundays*, which included a draft of the proposed variation to the Standard.

ACMA also provided copies of the discussion paper and proposed variation to all States and Territories, the Australian Competition and Consumer Commission, the Office of the Privacy Commissioner, bodies and associations representing various sections of the telemarketing industry, and bodies or associations representing the interests of consumers.

ACMA received 274 submissions in response to the discussion paper and 224 petition letters from:

- government organisations (7 submissions);
- industry and consumer representative groups (5 submissions);
- industry members, their employees and clients (225 submissions and 224 petition letters);
- and members of the public (37 submissions).

Notes on and Subsections

Section 1 – Name of Variation

Section 1 provides that the Variation is the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard Variation 2007 (No.1)*.

Section 2 – Commencement

Section 2 sets out that the Standard commences at the same time as Part 2 of the *Do Not Call Register Act 2006*. This is the same time as the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* commences.

Section 3 – Variation of the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007*.

Section 3 provides that Schedule 1 of the Variation varies the *Telecommunications (Do Not Call Register Act) (Telemarketing and Research Calls) Industry Standard 2007*.

Schedule 1 – Variation

Schedule 1 provides that paragraph 5(2)(e) of the *Telecommunications (Do Not Call Register Act) (Telemarketing and Research Calls) Industry Standard 2007* (which now provides that research calls not be made on Sundays without prior consent) be substituted with the requirement that research calls not be made on a Sunday before 9am or after 5pm, without prior consent.