



## SUBMISSION TO THE *DO NOT CALL REGISTER* STATUTORY REVIEW

4 November 2009

### Introduction

The Association of Market and Social Research Organisations (AMSRO) is the peak representative body for market and social research organisations in Australia.

The Australian Market and Social Research Society (AMSRS) is the peak representative body for individual market and social research professionals.

AMSRO has 100 member organisations representing approximately 80 per cent of total employment in the industry. The industry turns over \$750 million annually and employs more than 10,000 full-time-equivalents in Australia, including 4,100 full-time professionals.

AMSRS has 2,100 individual professional market & social researchers who are bound to observe the Code of Professional Behaviour, which covers both the ethics and standard conditions of conducting and reporting market and social research.

Together, the peak bodies represent the industry in Australia and work to promote understanding of market and social research, help set and maintain the highest ethical and technical standards, and represent the industry's interests in regulatory and legislative debate.

### Do Not Call Register Statutory Review

AMSRO and AMSRS would like to thank the Department of Broadband, Communications and the Digital Economy (DBCDE) for the opportunity to comment on the Department's October 2009 discussion paper, *Do Not Call Register Statutory Review* (the Review). We note the requirement under Section 45 of the *Do Not Call Register Act 2006* (the Act) for the legislation and the relevant provisions of the *Telecommunications Act 1997* to be reviewed before, or as soon as possible after, May 2010.

Generally, AMSRO and AMSRS believe the Act has operated satisfactorily and largely achieved its objective of regulating and minimising the number of unsolicited telemarketing calls made to Australians, without substantial unintended legislative consequences. For the purposes of the Review, we propose to restrict our input to three key areas relating to: exemptions; how 'research calls' are defined in the Act; and whether the register scheme should include any additional rules for telemarketers.

We note that the issue of 'time of day calling' is not included in the Act and is therefore not addressed in the current Review. Time of day calling is expected to be addressed in 2010 in the context of the Government's proposed review of the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007*. AMSRO and AMSRS ask that the Australian Communications and Media Authority (ACMA) not consider any submissions on this issue until that time.

Similarly, we note that the Review will not consider the changes announced in the 2009-10 Budget to extend the scope of the Do Not Call Register (the Register) to allow the registration of all telephone and fax numbers. AMSRO and AMSRS look forward to participating in the DBCDE's foreshadowed industry consultations on this issue.

## AMSRO and AMSRS Response to Review Questions

### Exemptions

#### 3.4.1. Are the current exemptions appropriate and relevant?

1. AMSRO and AMSRS consider that the current exemptions as they apply to 'designated telemarketing calls' are appropriate and relevant. 'Designated telemarketing calls' are calls from organisations which are deemed to be in the public interest and are further defined in Schedule 1 of the Act.
2. AMSRO and AMSRS note that calls for research purposes are not included under the definition of 'telemarketing calls' in the Act and can therefore be made to numbers listed on the Register. Given that market and social research calls are not a significant source of complaint to ACMA, to the Office of the Privacy Commissioner or, indeed, to AMSRO and AMSRS, there is no need to alter the current omission of research calls from the DNC restrictions.
3. AMSRO and AMSRS have evidence that supports our view that the exemption for research is appropriate because people are willing to participate in research in spite of having registered their phone number on the DNC Register.

During July and August 2009, Newspoll asked 4,805 participants in a series of Newspoll Omnibus surveys whether their phone number was listed on the DNCR and whether their number was unlisted or 'silent'. We found that the proportions of responses from unlisted numbers and households on the DNCR who completed Newspoll surveys is approximately equal to the proportions of these types of households believed to be present in the broader population.

This evidence is consistent with the view that people generally, and those on the Register, understand the difference between telemarketing and research and are willing to participate in research.

Details: Newspoll national telephone Omnibus conducted in July and August 2009  
4,805 responses (four rounds of 1200 surveys) Households with unlisted numbers participating (501 unweighted = 10%) equivalent to 11% of households participating in study after weighting Households listed on DNCR who participated (1643 unweighted = 34%) equivalent to 34% of households participating in study after weighting Weights - Area and Household size to ABS population and housing estimates

### Research Calls

#### 3.5.1 Should 'research calls' be defined in the Act to clearly distinguish between calls with a commercial purpose and calls with a research purpose?

1. AMSRO and AMSRS believe that there is scope to define 'research calls' in the Act, to assist individuals and organisations to understand how these calls can be made and to

distinguish market and social research from telemarketing. This would have the further benefit of ring-fencing any provisions intended to apply solely to market and social research calls.

2. Calls intended for research purposes are currently defined by omission, i.e. they are not included under the definition of 'telemarketing calls' in the Act and are not otherwise referred to in the Act.
3. AMSRO and AMSRS submit that 'research calls' could be defined as "calls made for market and social research purposes that contain no element of selling a product or service and in which the confidentiality and anonymity of participants is preserved".
4. AMSRO and AMSRS further submit that the Act should define a 'researcher' and 'research organisation' as holding membership of a professional body or association that requires, as a condition of membership, that members:
  - a. must not be involved in telemarketing activities, and
  - b. must be bound by individual and/or company codes and standards for the ethical conduct of market and social research.

### **Silent Calls and Missed Call Marketing**

4.5.3 Should the Register include additional rules requiring telemarketers to:

- keep internal records of their calls?
- keep internal do not call lists?
- limit the number and frequency of silent calls?

1. A proportion of AMSRO members (i.e. market and social research organisations) already maintain records of calls for reasons of transparency and accountability. AMSRO would, in principle, support the adoption of consistent rules for the both the telemarketing and market and social research industries in relation to such record keeping but considers that this should be the subject of further discussion and consultation.
2. For the same reasons as market and social research calls are not restricted based on the Register, the maintenance of internal do not call lists by market and social research organisations ought not to be required by legislation.
3. The telemarketing and market and social research industries both employ predicative dialling equipment that is used to call telephone numbers. While AMSRO acknowledges that this may lead to a small number of so-called 'silent' or 'missed' calls, the use of this equipment is important from an efficiency and cost-control perspective. The number of complaints made to ACMA regarding market and social research, however, is very low. From 1 July 2008 to 30 September 2009, 134 out of a total of 8,429 complaints were made to ACMA regarding calls from companies we have identified as market and social researchers. This represents 1.58 per cent. We believe this demonstrates that the vast majority of individuals who do not wish to be contacted for direct marketing purposes are willing to accept being contacted for genuine research purposes, presumably because they recognise the inherent value of research and the minimal burden it imposes in contrast to unsolicited telemarketing.
4. AMSRO and AMSRS would welcome the opportunity to be included in any further discussions concerning the possible introduction of regulation concerning silent and

missed calls and the use of predictive dialling equipment. We note DBCDE's view that regulation could be introduced in Australia through an industry code or standard and would suggest that any such discussions would be most appropriately conducted in the context of the Government's proposed review of the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007*.

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