



**Australian Government**

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**Department of Communications**

**REGULATION IMPACT STATEMENT**

**Optimal period of registration on the Do Not Call Register**

**September 2014**

## Introduction

This Regulation Impact Statement (RIS) has been prepared by the Commonwealth Department of Communications (the Department). The purpose of this RIS is to assist the Australian Government to make a decision on the optimal period of registration for the Do Not Call Register (the Register).

This RIS has been developed in accordance with the Australian Government Guide to Regulation, March 2014, issued by the Office of Best Practice Regulation (OBPR) in the Department of the Prime Minister and Cabinet, and in consultation with the OBPR. Relevant guidance notes issued by the OBPR have also been taken into account.

The Department has prepared a standard form RIS as this proposal is considered to have a contained impact on the economy and is likely to impact a limited number of businesses. The issue has previously been considered.

## Background

The *Do Not Call Register Act 2006* (the Act) established the Register. Individuals can record their telephone number on the Register to opt out of most unsolicited telemarketing calls and marketing faxes. Unless an exception applies, unsolicited telemarketing calls and marketing faxes may not be made to a number on the Register, regardless of whether the call or fax originates overseas. The Australian Communications and Media Authority (ACMA) is responsible for overseeing the Register's operation. The Register is subject to competitive tender processes and is currently managed under contract by Service Stream Pty Ltd (the Register Operator).

The Register became operational in May 2007. As at 31 March 2014, 9.4 million numbers have been registered<sup>1</sup>. Because individuals register on average 1.2 to 1.5 numbers at a time, there are approximately 7.3 million individuals that have registered numbers to date.

Registrations are time limited. Originally the registration period was set at three years, to address concerns that an indefinite (or very long) period of registration could introduce 'inaccuracies' into the Register. Inaccuracies can occur because individuals have no incentive to update the Register in the event their telephone number changes (i.e. change of address or disconnection).

To date, numbers on the Register have never been allowed to expire. In the past, as the expiration date for the first number registered on the Register has approached, a determination under the Act has been made to extend the period of registration. The first extension occurred in 2010<sup>2</sup>, and subsequent extensions occurred on 2012 and 2013. The registration period currently sits at eight years. Consequently, without regulatory intervention, numbers on Register will begin to expire from 31 May 2015.

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<sup>1</sup> See [here](#)

<sup>2</sup> *Do Not Call Register (Duration of Registration) Specification No 1 2010*

## Existing regulatory arrangements

The Act allows a broad range of numbers to be registered:

- telephone numbers used primarily for private and domestic purposes
- emergency service telephone numbers
- government telephone numbers
- telephone numbers used for sending and receiving faxes<sup>3</sup>.

In 2009, consideration was given to extending the Register to business numbers. However, consultations with businesses and business groups at the time found that there was not strong enough support to extend the Register to business telephone numbers. Concerns were expressed about whether the benefits from the extension would be outweighed by increased compliance costs.

Unsolicited telemarketing calls and marketing faxes are not permitted to be made to a number on the Register, subject to certain exceptions. 'Telemarketing calls' and 'marketing faxes' are broadly defined in the Act. In general terms, a telemarketing call is a voice call made to an Australian number where one of the purposes of the call is to:

- 1) offer to supply, advertise, or promote a supplier of, goods or services
- 2) offer to supply, advertise, or promote a supplier of, land or an interest in land
- 3) offer to supply, advertise, or promote a provider of, a business opportunity or investment opportunity
- 4) solicit donations.

Similarly, a marketing fax is a fax sent to an Australian number where one of the purposes of the fax is the same as those listed above.

Exceptions apply to organisations considered to be operating in the public interest. Examples of these include government bodies, registered political parties, Members of Parliament, political candidates, religious organisations, charities and educational organisations.

### *The washing process*

Organisations wishing to undertake unsolicited telemarketing or fax marketing activities must register with the Register Operator through the 'Telemarketer Access Portal' or TAP.

Fax and telephone marketers submit their contact lists to the Register operator, which then 'washes' the list – that is, compares it against the Register and identifies which telephone numbers are on the Register. This process enables fax and telephone marketers to avoid making unsolicited calls to registered numbers.

Subscription fees apply to the washing process. The fees cover the full direct costs of operating the Register. Some indirect costs, such as consumer awareness, are funded from Consolidated Revenue.

The subscription fees currently range from subscription type A, that allows fax and telephone marketers to submit 500 numbers for checking free of charge, through to

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<sup>3</sup> Fax numbers can be registered even where they are not used primarily for private and domestic purposes.

subscription type H, which allows 100,000,000 numbers to be checked for \$90,000.<sup>4</sup> The table below shows the full range of subscription fees.

Subscription type	Quantity of numbers able to be submitted	Annual subscription fee (2014)
A	500	\$0
B	20,000	\$79
C	100,000	\$370
D	1,000,000	\$3,200
E	10,000,000	\$27,000
F	20,000,000	\$45,000
G	50,000,000	\$67,500
H	100,000,000	\$90,000

Demand for the washing service has remained strong, and steadily increased<sup>5</sup>. The average quantity of numbers submitted for washing has increased – in 2007, 67.6 million numbers were submitted on average per month. By 2013, 102.6 million numbers were submitted on average per month. The increase in demand for washing services has continued despite extensions of the registration period in 2010, 2012 and 2013. The graph below illustrates the quantity of numbers being washed through the Register, each month, since May 2007.



<sup>4</sup> See [here](#) for more information. Multiple subscriptions can be purchased for telemarketers that wish to check more than 100 000 000 numbers.

<sup>5</sup> See [here](#)

Most paid subscriptions are on the lower end of the spectrum, and ‘free’ subscriptions make up almost a third of total subscriptions. In the three years to 31 January 2014, 2,560 TAP accounts purchased 11,541 subscriptions and paid a total of \$10 million in access fees. In this period, most access-seekers (57%) washed between 1 and 20,000 numbers per year; only a small proportion (6%) washed more than 1 million numbers per year<sup>6</sup>. The table below illustrates the number of accounts at different subscription levels in the three years to January 2014.

Quantity of numbers washed	Number of TAP accounts	Proportion of TAP accounts
0 – Not used or use pending	347	13%
1 to 500	734	29%
500 to 20,000	727	28%
20,000 to 200,000	397	16%
200,000 to 1 million	194	8%
1 to 4 million	101	4%
Greater than 4 million	60	2%

Businesses engaging in telemarketing and fax marketing make an important contribution to Australia’s growth and prosperity. If fax and telephone marketing becomes more costly or difficult, firms engaged in these activities will naturally pass on this additional cost to consumers through additional fees and charges, reducing the competitiveness of their products and services. Firms using fax and telephone marketing may also move to other potentially less efficient channels (such as social media and direct mail) or potentially more intrusive channels (such as door to door sales or email marketing) to market their products and services.

#### *Other regulation*

The Register is one of a number of regulatory mechanisms that allows individuals to protect their privacy. For example, the *Privacy Act 1988* regulates the handling of personal information about individuals. This includes the collection, use, storage and disclosure of personal information, and access to and correction of that information<sup>7</sup>. The *Privacy Act* does not directly regulate fax and telephone marketing – while the *Privacy Act* can assist individuals to determine how their personal information is used or disclosed, it does not prevent marketing faxes or telemarketing calls from being made.

Similarly, an ‘unlisted’ or ‘silent’ number can also help an individual or business protect their privacy by prohibiting it from being published in a public number directory (such as the White Pages). However, having an unlisted number does not directly prevent unwanted marketing faxes or telemarketing calls. For example, organisations can use random or

<sup>6</sup> ACMA, DNCR operator records

<sup>7</sup> For more information about the *Privacy Act* see [here](#)

sequential dialling techniques to conduct telemarketing campaigns or individuals may inadvertently disclose unlisted numbers on application forms or competition entries<sup>8</sup>.

## Assessing the problem

By definition, unwanted telemarketing and fax marketing are a negative externality that costs consumers in terms of lost time and productivity<sup>9</sup>. When an unwanted telemarketing call is made, a consumer must either answer the call or ignore it. Because of the end-to-end interconnected nature of the telephony network, it is not possible for consumers to ‘filter’ calls, except using heuristics (such as deciding to only answer calls with recognised caller ID, or to only answer calls at specific times of the day). Unwanted fax marketing poses a similar problem, except the cost is generally in lost toner and paper, and wear and tear to the fax machine. As a result, telemarketing and fax marketing companies do not internalise all of the cost of unsolicited telemarketing calls or marketing faxes. While telemarketers and fax marketers pay call costs, staffing costs etc, they do not internalise the costs associated with the nuisance caused by unwanted telemarketing calls or marketing faxes (albeit there may be some reputational damage<sup>10</sup>).

Unwanted telemarketing and fax marketing can also disproportionately impact vulnerable consumers, such as the elderly, whom can become confused and distressed by this activity and may find it physically difficult to answer unwanted calls or replace used toner.

Recent empirical studies have sought to quantify the extent to which the community is receptive to unsolicited direct marketing. A 2013 study by the Office of the Australian Information Commissioner (OAIC) has found that<sup>11</sup>:

- 56 per cent of respondents felt annoyed by unsolicited marketing approaches.
- 39 per cent of respondents expressed concern about how their details were obtained by the organisation contacting them.

Community attitudes to unsolicited marketing have been shifting – the 2013 survey showed that the community generally felt more annoyed by telemarketing than a similar survey in 2007<sup>12</sup>. The 2013 survey also found that only three per cent of respondents indicated that unsolicited marketing information doesn’t bother them and, of this, two per cent indicated that they enjoy receiving it. There is little data on consumer views about unsolicited ‘telemarketing’ in comparison to other marketing channels.

The ACMA provides a mechanism that allows registrants to de-register their number<sup>13</sup>. The Department understands that this mechanism has not been used frequently, and is a further indication of the general attitude that consumers have toward unsolicited telemarketing.

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<sup>8</sup> See [here](#)

<sup>9</sup> Conversely, ‘wanted’ telemarketing calls are not negative externalities. It may be that from a consumer’s perspective, there are classes of telemarketing calls that are unwanted and classes that are wanted. In these cases consumers make a decision, whether overall, the benefit of wanted telemarketing calls outweighs unwanted telemarketing calls and may on that basis register on the Register.

<sup>10</sup> See ‘Consumer Policy Toolkit’, OECD for additional discussion on this point. See [here](#)

<sup>11</sup> See [here](#) for more information.

<sup>12</sup> In 2013, 45 per cent were annoyed by unsolicited marketing versus 27 per cent from a similar survey done by the OAIC in 2007. In the 2013 survey, respondents were less likely to feel that unsolicited marketing was ‘a bit annoying, but mostly harmless’ (11 per cent in 2013 versus 23 per cent in 2007).

<sup>13</sup> See [here](#)

Despite these reported preferences, fax and telephone marketing remain popular marketing channels. As noted on page 4, demand for washing services has continued to increase. Since 2006, the average quantity of numbers submitted for washing through the Register has risen by approximately 35 million numbers per month. As commercial entities, fax and telephone marketers will only utilise a channel where it is effective. Given that demand for washing services has increased, it is reasonable to assume that this is partly because the telephone and fax remain effective sales channels, which are relatively efficient mechanisms for buyers and sellers to be connected. It would appear that consumers tend to overstate their reported preferences in the survey data, whilst at the same time purchasing products through unsolicited fax and telemarketing.

This highlights an important characteristic of the current 'opt-out' arrangement, in that it maximises consumer choice, while largely minimising the negative externality caused by unwanted fax and telemarketing. Consumers that are entirely opposed to unsolicited fax and telephone marketing have an effective way to opt-out. Consumers that wish to 'tailor' the fax and telephone marketing offers that they receive can selectively consent to their firms of choice. Finally, consumers that support unsolicited fax and telephone marketing can retain their unregistered number (or de-register their number if it is registered). The flexibility of the current system allows consumers to express conveniently and effectively their preference, and places a collective onus on the fax and telephone marketing industries to improve their marketing practices, to motivate consumers to de-register their number or decide not to register their number in the first place.

Current arrangements mean that without regulatory intervention, consumers will need to begin re-registering their numbers from 31 May 2015 to continue to receive the protections provided by the Register. The re-registration process imposes costs on consumers in terms of lost time and productivity. Moreover, consumers may not be aware that the registration of their number is time limited – the ACMA's pre-emptive re-registration information campaign in 2010 showed that of the consumers that the ACMA was unable to contact, most did not realise that re-registration was required. Consequently, consumers may begin to receive unwanted fax and telemarketing before they realise that their registration has expired.

The Government has been considering what changes could be made to the Register to reduce this burden on consumers and determine the optimal period of registration, while ensuring that compliance costs on industry remain low and any costs to tax payers is minimised.

Various exempt organisations (i.e. charities, political parties) also impose costs on consumers through their fax and telephone marketing activities. However, these activities are not being considered in this RIS, given that they are exempt under the Act.

## **Objectives of Government action**

In considering the optimal period of registration on the Register, the Department has identified a range of competing objectives:

- > ensuring the Register allows consumers to express an effective choice about their preference for unsolicited fax and telephone marketing. For those consumers that

do not want to receive unsolicited fax and telephone marketing, a key objective is to minimise the cost on consumers in expressing their choice.

- > minimising the regulatory or administrative impact on businesses engaging in fax and telephone marketing activities as far as possible, including providing a certain, consistent and efficient environment for legitimate marketing activity to occur.
- > limiting the impact on government resources, for example, the need for the ACMA to undertake a long and costly education campaign to remind registrants that they need to re-register.

There is a need to balance the interests of consumers, while recognising the benefits that can flow from fax and telephone marketing. These channels can play a legitimate role, as they may be more cost effective than alternatives and may be useful to small and medium enterprises and new entrants that do not have established relationships with existing customers. Determining a long term solution to the registration period will also provide certainty to both industry and consumers.

## Options that may achieve the objectives

This RIS considers four options:

- > Option 1: Three year registration period
- > Option 2: Eight year registration period
- > Option 3: Indefinite registration
- > Option 4: Remove the need to register (opt-in scheme)

The first three options would maintain the Register in list form – fax and telephone marketing would need to continue to wash their calling lists against the Register. Under these three options, it is expected that the registration rate will continue on its current trajectory – that is approximately 1 million new registrations would be recorded on the Register each year<sup>14</sup>.

The final option considered in this RIS – ‘removing the need to register’ would be a substantial departure from the current regulatory environment, as it would effectively prohibit all unsolicited fax and telephone marketing unless there was consent or an exemption applied.

The Department canvassed these options in its December 2013 public discussion paper. Full details on this consultation process is available on page 23.

### Option 1: Three year registration period

Under Option 1, the registration period would be set at three years. This was the original registration period when the Register was introduced. Registrants would need to re-register their number every three years to maintain the protections provided by the Register. Under

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<sup>14</sup> See page 4 for further detail – the length of registration has not impacted on the rate of registration. That is, in 2007 when registrations were valid for three years the registration rate was similar to the rate in 2013, when registrations were valid for eight years.



this option, the Government would not act to extend the period of registration, and allow registrations to expire from May 2015.

It is likely that the ACMA would need to undertake an education initiative to advise existing registrants (7.3 million individuals, covering 9.4 million numbers) that they may wish to re-register their numbers. Because numbers are registered at different times, they would also expire at different times. Consequently, the ACMA would need to maintain an ongoing education initiative. This would impose a significant administrative cost on the ACMA, which would ultimately be met by taxpayers. An ongoing campaign would not have the same momentum as a standalone campaign and would likely be less effective in reaching all registrants.

In 2010, the ACMA commenced a pre-emptive education initiative to inform registrants of the need to re-register in anticipation of the expiration of the original registration period. This resulted in only 50 per cent of numbers being re-registered due to the difficulty in reaching consumers using the contact details provided at the point of registration.

In responding to the Department's discussion paper process, the overwhelming majority of consumer stakeholder submissions (1,246) did not support a shorter period of registration and the need to re-register generally, due to the inconvenience of having to do so. These submissions generally argued that consumers were unlikely to change their preference about unsolicited fax and telephone marketing.

Industry stakeholders supported a registration period of three years, with many suggesting that the original objective of a three year registration period, to ensure the ongoing accuracy of the Register, was still an important consideration. Industry respondents were concerned that the Register has become inaccurate over time and a three year registration period would restore the accuracy of the information on the Register.

## **Option 2: Eight year registration period**

Option 2 would require no regulatory action, and would maintain the registration period at eight years. Registrants would need to re-register their number every eight years to maintain the protections provided by the Register. Under this option, the Government would not act to extend the period of registration, and allow registrations to expire from May 2015.

The same considerations would apply as Option 1 in relation to the actions registrants would need to undertake to re-register. Re-registration would not need to be done as frequently, but would also mean that it is more likely for registrants to forget that they need to re-register. It also makes contact from the ACMA more difficult, given that people may have changed their preferred contact details (such as their email address). The ACMA would then need to rely on contacting registrants through their registered number, which may lead to criticism by registrants, whom may be sensitive to unsolicited calls even where they are not commercially motivated.

Some industry respondents expressed support for this option, albeit, industry support for Option 1 was stronger. Consumer respondents did not support an eight year registration period, as many considered the need to re-register every eight years onerous.

### **Option 3: Indefinite registration**

Under Option 3, registrations would be indefinite. Once a number was registered it would remain on the Register until such time as it was removed (for example, through a request from the account-holder).

Despite the limited registration period set down in the legislation, registrants to date have never needed to re-register their number because the registration period has always been extended prior to reaching the expiration date.

There was substantial support for this option in response to the Department's December 2013 discussion paper on the basis that it would remove the inconvenience associated with re-registering (albeit, most submissions supported Option 4 in the first instance).

Industry respondents raised concerns about the impact that an indefinite period of registration would have on the accuracy of the Register. This is discussed in detail on page 11, under the heading 'Cleansing Mechanism'.

### **Option 4: Remove the need to register (opt-in scheme)**

Under Option 4, the Register would be closed and replaced with an opt-in approach. Consumers that wish to receive fax and telephone marketing would need to provide their express or implied consent to organisations on a case by case basis.

This option does not contemplate the creation of a centralised 'opt-in' list (i.e. the creation of a 'Call' Register). As noted on pages 6 and 7, there appears to be a mismatch between consumers' reported preferences and their actual behaviour. Based on the evidence available, it appears that a centralised 'opt-in' list would have very few registrations, which reduces the incentive on fax and telephone marketers to wash their lists against any 'Call' Register, which in turn would call into question the ability of the Government to cost-recover the scheme.

Rather than running a 'Call' Register, this option contemplates prohibiting all unsolicited fax and telephone marketing, unless there was consent or an exemption applies. Consumers would be unable to express a broad preference about receiving unsolicited fax or telephone marketing and would instead need to opt-in to fax or telephone marketers on a case by case basis.

This option would operate in a similar way to the *Spam Act 2003* (the Spam Act). The Spam Act prohibits the sending of 'unsolicited commercial electronic messages' (known as spam) with an 'Australian link'. A message has an Australian link if it originates or was commissioned in Australia, or originates overseas but was sent to an address accessed in Australia. The Spam Act covers email, mobile phone text messages (SMS), multimedia messages (MMS), instant messages (IM), and other electronic messages of a commercial nature.

Many registrants responding to the discussion paper were supportive of a Spam Act style approach to fax and telephone marketing. Some consumer groups, such as CHOICE and the Australian Communications Consumer Action Network, were also supportive of this option, arguing that the default position should acknowledge that consumers generally do not want to receive fax and telephone marketing.

Industry respondents were concerned about the impact of this option on the telemarketing

and fax marketing industries, and in particular on new businesses seeking to utilise these channels to market their goods and services.

## Cleansing mechanism

Industry respondents have raised concerns about the accuracy of the Register as numbers are reallocated to new account-holders when the number is disconnected after a period of quarantine. This practice is in accordance with industry standards for dealing with disconnections and the reallocation of numbers.

The extent of inaccuracy on the Register has not been quantified. A baseline estimate has been made using Australian Bureau of Statistics house moving data<sup>15</sup>, which indicates the average Australian has lived at their current place of residence for at least five years. Nearly three in five people (58 per cent) lived in their current place of residence five years ago.

There are also a number of other factors<sup>16</sup>, which act to prevent inaccuracy in the future or reduce the need for a cleansing mechanism:

- > Local Number portability allows consumers to keep their geographic number (i.e. 02 6271 XXXX) when they switch providers. For example, a person changing telephone providers can keep their number when they move to a new provider<sup>17</sup>. In 2011-12, there were 627,160<sup>18</sup> geographic numbers ported. By October 2013, there were 5 million landline numbers on the Register. Since the commencement of the Register, a total of 3.7 million geographic numbers have been ported. Access to Local Number Portability may mean that consumers are less likely to need to seek a new number when they swap providers, and this may therefore reduce the quantity of numbers entering quarantine for eventual reallocation.
- > Mobile Number Portability allows consumers to retain their mobile telephone number when they change providers. For example, a person changing mobile telephone service providers can keep their number when they move to a new provider<sup>19</sup>. In 2011-12, there were 2.6 million mobile numbers ported<sup>20</sup>. By October 2013, there were 3.85 million mobile numbers on the Register<sup>21</sup>. Since the commencement of the Register, a total of 8.9 million mobile numbers have been ported. Mobile Number Portability, like Local Number Portability, may mean that consumers are less likely to need to seek a new number when they swap providers, and this may therefore reduce the quantity of numbers entering quarantine for eventual reallocation. However, it is worth noting that pre-paid numbers have a high turnover (that is, a consumer may simply discard their number). Likewise, prepaid mobile services may also be passed on from person to person without anyone

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<sup>15</sup> See the [ABS' Australian Social Trends, April 2013](#)

<sup>16</sup> Some telecommunications providers have noted that the closure of some telecommunications providers could have increased the inaccuracy of the Register. However, it is likely that customers of these providers will have ported their numbers to new providers, which would not impact the accuracy of the Register.

<sup>17</sup> See <http://www.acma.gov.au/Citizen/Citizen-info/All-about-numbers/Keeping-your-number/local-number-portability-keeping-your-number-i-acma>

<sup>18</sup> ACMA Communications Report 2011-12, p.23

<sup>19</sup> See [here](#)

<sup>20</sup> ACMA Communications Report 2011-12, p.23

<sup>21</sup> See [here](#)

contacting the supplier. Hence, pre-paid mobile phone numbers on the Register have an increased likelihood of inaccuracy.

- > Location portability allows individuals (and organisations) to retain their fixed line number when they move<sup>22</sup>. This is possible when an individual is moving house within the same general geographic area (for example within Canberra or Gosford). Some providers do not allow location portability, which may limit the ability of consumers to access this service when they move. The ACMA has relaxed these rules for Voice over Internet Protocol (VoIP) services – in certain circumstances, individuals can acquire a VoIP number that does not relate to the geographic area that they live in (for example, in certain circumstances a person living in Canberra can be issued a Melbourne number – e.g. 03 9963 XXXX).
- > Changing a place of residence does not normally require any change in the existing mobile numbers, so the accuracy of the mobile numbers on the Register are not usually affected by moving. As of 15 July 2013, there were 3.85 million mobile phone numbers registered. ACMA statistics show that the overall number of landlines in Australia is decreasing (approximately 1.1 per cent decline each year) while mobile phone services are increasing (approximately 3 per cent increase each year).

Inaccuracies in the Register mean some consumers' numbers may be inadvertently registered. In these cases, these consumers may be missing out on wanted unsolicited telephone and fax marketing. Under the current arrangements, these consumers could check the Register to determine whether their number has been registered. It should be noted that the ACMA has not received complaints from individuals who have their number registered, but did not want it to be. The lack of complaints may be a result of registrants not being aware their number is registered, or alternatively, it may mean they do not mind their number being registered.

Nonetheless, as part of its consultation for this proposal, the Department has considered whether there is a case to introduce a 'cleansing mechanism'. The key objectives of a cleansing mechanism would be to:

- > reduce the reliance on a limited registration period to maintain the accuracy of the Register
- > remove numbers from the Register that have not been registered by the current account-holder of that number
- > minimise any cross-subsidy between industry sectors (for example, from the telecommunications industry or from taxpayers to the fax and telephone marketing industries)
- > minimise the cost on businesses engaging in fax and telephone marketing as far as possible.

The most cost effective model is a data cleansing mechanism using the Integrated Public Number Database (IPND). The IPND is a centralised database of all Australian telephone

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<sup>22</sup>See <http://www.acma.gov.au/Citizen/Citizen-info/All-about-numbers/Keeping-your-number/local-number-portability-keeping-your-number-i-acma>

numbers and associated subscriber details<sup>23</sup>. The process would work as follows:

- > The ACMA or Register Operator would examine IPND disconnection and reconnection data to determine where a number has been disconnected and reallocated to a new subscriber. Where the length of time between disconnection and reconnection is greater than 30 days<sup>24</sup>, it is assumed that this is a genuine reallocation (rather than a consumer having their service disconnected because of unpaid bills, for example).
- > Using this data the ACMA or Register Operator would generate a list of numbers that have a high probability of having been re-allocated since the last cleansing process<sup>25</sup>.
- > The ACMA or Register Operator would compare the list generated from the IPND and compare it to the Register to generate a list of numbers that are candidates for removal from the Register.
- > The ACMA or Register Operator would then remove those numbers from the Register and may also contact the registrant to indicate that their number will be shortly removed.

The cost of undertaking this cleansing process is expected to be approximately \$1.4 million in the first year, and \$1.3 million for each subsequent year, which would be recovered from industry through washing fees. If introduced, the cleansing mechanism would likely increase washing fees by between 15 and 20 per cent. The precise impact would be dependent on the frequency of the cleansing process.

The Government does not propose to introduce a cleansing mechanism, and the subsequent higher washing fees, unless there is strong support across the fax and telephone marketing industries. Consultations with industry stakeholders on a preferred cleansing mechanism have not generated the level of support within industry to justify the introduction of a cleansing mechanism. If, at a future point, there was consensus industry support for the introduction of a cleansing mechanism, the Government would consider the request. Any regulatory impact would be determined at that time.

## Net benefits

### Option 1: Three year registration period

#### Impact on businesses

Option 1 does not have any regulatory impact or compliance cost on businesses, as it would not alter the obligation on business prohibiting unsolicited fax and telephone marketing to

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<sup>23</sup> See [here](#)

<sup>24</sup> The length of this period is subject to change – as the ACMA or Register Operator become more familiar with the data this period could be adjusted (although it is unlikely to be shortened).

<sup>25</sup> The Department has considered how far back in time connection and disconnections records should be examined, and considers that this period should be linked to the frequency of running the cleansing mechanism. For example, if the cleansing mechanism was being run every three years, the first time the cleansing process was run (in this example, on 1 January 2016), the ACMA or Register operator would examine disconnection and reconnection records from 1 January 2013.

registered numbers.

### **Impact on individuals**

Option 1 would negatively impact registrants by requiring them to re-register a number every three years if they wished to continue to receive the protections of the Register. While the current arrangements require re-registration every eight years, in practice, registrants have never had to re-register.

Consultations have indicated that consumers find the re-registration process to be an inconvenience and intrusion into their productivity and privacy. Furthermore, the Department's consultation indicated that registrants were highly likely to re-register their number, although many may only do so once they begin to receive unwanted fax and telephone marketing.

Consequently, if Option 1 was implemented consumers would face the direct costs in time and lost-opportunity of re-registering their number.

Consumers would also face indirect costs – some registrants will not re-register their number immediately, either because they forget or because they will not have seen the awareness activities undertaken by the ACMA, and will only re-register once they begin to receive unwanted fax and telephone marketing. Because this cost is indirect, it has not been incorporated into the cost estimates used in this RIS.

The impact may generally be more onerous for vulnerable or disadvantaged individuals that may have more difficulty re-registering, for example, because they have limited options for accessing the registration process or they need assistance from someone to register.

### **Impact on Government**

The ACMA would need to run an education campaign to ensure that registrants are aware of the need to re-register. While the ACMA may be able to use registrants' email addresses to inform them of the need to re-register, it is likely that many of these will no longer be in use, making it difficult to ensure registrants have been adequately informed.

As not all numbers will expire at the same time (that is, registrations are currently valid for eight years from the date that the number was registered) there would be a need for the ACMA to establish systems to constantly inform registrants as numbers nears expiration. This would create a significant impost on the ACMA in terms of the resources required to develop and run such systems.

It is likely that there would be some numbers that are not re-registered because the registrant is unaware of the need to do so, leading to some registrants receiving marketing calls or faxes. This could impact on consumers in lost time and productivity. It may lead to the perception that the Register is ineffective in reducing the inconvenience of unsolicited fax and telephone marketing.

### **Costs**

The costs of Option 1 are averaged over ten year period and based on the costs individuals will incur to re-register their number in lost time.

It is assumed that all current registrants (7.3 million) would wish to continue their

registration for each of their numbers currently registered. It is assumed that it would take an average of five minutes to re-register a number<sup>26</sup>, including the time taken to read the general information on the Register and complete the form or enter details when registering over the phone.

In determining costs, the Department has projected a conservative increase in the size of the Register, based on average registration rates from the last 6 years of registration data.

## Conclusion

Option 1 is the highest cost option, because of the significant impost on consumers. It would create a significant and ongoing cost burden on the ACMA. For these reasons, this option is not recommended. Option 1 does not meet the Government’s objectives.

### Option 1: Regulatory Burden and Cost Offset

#### Average annual regulatory costs (from business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
<b>Total, by sector</b>	\$0	\$0	\$8.66m	\$8.66m
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
<b>Agency</b>	\$22.02m	\$0	\$0	\$22.02m

#### Are all new costs offset?

Yes, costs are offset  No, costs are not offset  Deregulatory—no offsets required

**Total (Change in costs – Cost offset) (\$ million) = -\$13.36m**

The regulatory costs identified in the above table reflect the average cost on consumers per year, averaged over a ten year period. These compliance costs represent the incremental cost of a consumer having to undertake two additional registrations over the ten-year assessment period.

The regulatory cost offsets noted in the above table have been identified within the Communications portfolio. These cost offsets relate to the Identity Checks for Prepaid Mobile Services reforms.

## Option 2: Eight year registration period

### Impact on businesses

Option 2 does not have any regulatory impact or compliance cost on businesses, as it would not alter the obligation on business prohibiting unsolicited fax and telephone marketing to

<sup>26</sup> Based on data provided by the ACMA on the time taken to register by method of registration

registered numbers.

## Impact on individuals

Consumers would need to re-register their number every eight years (once in every ten year period). Although an eight year registration period is currently in place, incremental extensions to the Register have prevented registrants from ever needing to re-register their numbers.

## Impact on Government

The impact on the ACMA would be as above for Option 1, noting that it may be more difficult to contact registrants, as contact email addresses are more likely to have changed over an eight year period than a three year period.

## Costs

The costs of Option 2 are averaged over a ten year period and based on the costs individuals will incur to re-register a number in lost time.

It is assumed that all current registrants (7.3 million) would wish to continue their registration for each of their numbers currently registered. It is assumed that it would take an average of five minutes to re-register a number<sup>27</sup>, including the time taken to read the general information on the Register and complete the form or enter details when registering over the phone.

In determining costs, the Department has projected a conservative increase in the size of the Register, based on average registration rates from the last 6 years of registration data.

## Conclusion

Option 2 is the second highest cost option, because of the significant impost on consumers. It would create a significant and ongoing cost burden on the ACMA. For these reasons, this option is not recommended. Option 2 does not meet the Government's objectives.

### Option 2: Regulatory Burden and Cost Offset

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#### Average annual regulatory costs (from business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
<b>Total, by sector</b>	\$0	\$0	\$0	\$0
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
<b>Agency</b>	\$0	\$0	\$0	\$0

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<sup>27</sup> Based on data provided by the ACMA on the time taken to register by method of registration.



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**Are all new costs offset?**

Yes, costs are offset  No, costs are not offset  Deregulatory—no offsets required

**Total (Change in costs – Cost offset) (\$ million) = \$0**

The regulatory costs identified in the above table reflect the average cost borne by consumers per year, averaged over a ten year period. Consumers will need to re-register once over the ten-year assessment period. As this is the status quo, incremental compliance costs have been assessed as zero.

### Option 3: Indefinite registration

#### Impact on businesses

Option 3 does not have any regulatory impact or compliance cost on businesses, as it would not alter the obligation on business prohibiting unsolicited fax and telephone marketing to registered numbers.

As noted above (under ‘Existing regulatory arrangements’) demand for washing services has steadily increased since the Register’s establishment, despite one million new registrations on average each year, and extensions in the registration period. Although indefinite registration would be legislated under this option, there would be no change to the operational impact of the Register, given that to date a number on the Register has never expired.

The low compliance cost for businesses for Option 3 is supported by the experiences in other jurisdictions. The United States, India, Spain, Singapore and the United Kingdom have adopted indefinite registration models. Despite an indefinite registration period, the telemarketing and call centre industries in these jurisdictions have successfully diversified<sup>28</sup> and adapted. In Australia, the growth of the digital economy and online consumer engagement has also established new and emerging channels and opportunities for direct marketing activity.

#### Impact on individuals

Option 3 is supported by the overwhelming majority of consumers that responded to the discussion paper. Consumers generally argued that this option would ensure that they can avoid the inconvenience of re-registering a number.

Like Options 1 and 2, Option 3 protects the capacity of consumers to choose whether or not they wish to receive unsolicited fax or telephone marketing. Maintaining the Register in current form maximises the choice available to consumers.

If an indefinite registration period was implemented, individuals would be able to remove their number from the Register at any time. The de-registering mechanism has seldom been used and registrations on the Register have constantly increased each month since its establishment, despite extensions to registration period. On this basis, a move to indefinite registration is unlikely to accelerate registrations.

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<sup>28</sup> See [here](#)

## Impact on Government

As registrants would not need to re-register a number once included on the Register, there would be no need for the ACMA to undertake an education campaign reminding registrants to re-register.

## Costs

This option may have some indirect costs associated with the impact it will have on fax and telephone marketing businesses, but has no direct compliance costs for the purposes of this RIS over the forecast ten year period.

## Conclusion

Option 3 is the lowest cost option. This option addresses consumer concerns over the need to re-register and strikes an appropriate balance between the needs of consumers and industry. Industry has expressed some concerns about the reduction of numbers available for fax and telephone marketing activities. However, the current strong registration rates, the strong demand for washing services, and that to date numbers have never expired on the Register, suggests this option is most likely to have a modest impact on industry and a positive impact on consumers.

Under this option, the ACMA would not be required to undertake an education initiative to advise registrants of the need to re-register. While this option will have some indirect costs and impacts on business, it has no compliance costs. For these reasons, this option is preferred.

### Option 3: Regulatory Burden and Cost Offset

#### Average annual regulatory costs (from business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
<b>Total, by sector</b>	\$0	\$0	-\$3.48m	-\$3.48m

  

Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
<b>Agency</b>	\$0	\$0	\$0	\$0

#### Are all new costs offset?

Yes, costs are offset  No, costs are not offset  Deregulatory—no offsets required

**Total (Change in costs – Cost offset) (\$ million) = -\$3.48m**

The regulatory costs identified in the above table reflect the average cost on consumers per year, averaged over a ten year period. This option will remove the need for one instance of re-registration over the ten-year assessment period compared with the status quo. Therefore, savings have been calculated on this basis.

## Option 4: Remove the need to register (opt-in scheme)

### Impact on businesses

Industry has strong views about the impact that Option 4 would have on the fax and telephone marketing channels, including the effect on competition. The fax and telephone have continued to be popular channels for firms, despite the rise and viability of other channels (such as social media). Indeed, as noted on page 4, demand for washing services has continued despite the emergence of new marketing channels since 2006.

Small business and new entrants may be disproportionately impacted by this option. Small firms and new entrants are unlikely to have large customer bases, and may need to pursue consent more aggressively. Increasing contractual complexity to establish a broad consent base for future activities has previously been a concern of telecommunications-end-users<sup>29</sup> and could result in consumer harm.

Furthermore, reducing the availability of the fax and telephone marketing channels could incentivise firms to use alternative marketing channels. In some case, this could result in firms using channels that are less effective and more disruptive (for example, some consumers may see alternatives such as door to door sales as more intrusive than telemarketing).

Those businesses, which rely wholly on cold-calling numbers, would be adversely affected by this change and would need to consider alternative contact channels or changing their business model. Some businesses may be wound-up if they cannot transition effectively. As at 1 February 2014, the ACMA has advised there were 1,215 active users of the TAP. Approximately 35 per cent of active TAP users (425 businesses) undertake fax or telephone marketing as their primary activity. A further seven per cent of active TAP users (85 businesses) on-sell or provide contact lists to other businesses. It is possible that these businesses (510 in total) would cease to operate as a result of the changes or would need to substantially alter their business models.

In relation to the size of businesses affected, ACMA research<sup>30</sup> indicates that about two-thirds of the organisations seeking access to the Register have less than 21 employees and 12 per cent employ more than 200 people.

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<sup>29</sup> ALRC 2008 Review of Australian Privacy Law: For Your Information Report, pp2424 – 2425, Paras 72.49 – 72.55.

<sup>30</sup> ACMA research from 2012 survey. The survey elicited 183 responses, representing a response rate of approximately 15% of active TAP accounts at the time.

Number of employees	Percentage
Less than 5	30%
6 to 20	37%
21 to 200	21%
More than 200	12%

The potential impact on the industry is not consistent with the Government’s policy objectives to minimise the impact on businesses engaging in fax and telephone marketing activities and gives these firms little opportunity to adjust in line with consumer preferences.

### **Impact on individuals**

Many consumers were supportive of an opt-in regime under which individuals could receive fax and telephone marketing from individual companies where there was consent. It was also supported by consumer and privacy groups which noted the impact of unsolicited fax and telephone marketing on consumers, particularly disadvantaged Australians.

However, in responding to this option through the Department’s 2013 discussion paper process, many consumers felt that the privacy of individuals and their ability to choose to not receive unsolicited fax and telephone marketing should be paramount. Importantly, implementing this option removes a key principle behind the establishment of the Register, which is to provide consumers with the ability to make an overarching choice about whether they would like to receive unsolicited fax and telephone marketing.

Furthermore, as demonstrated at page 6 and 7, there may be a difference between reported preferences and actual behaviour. Demand for washing services has been steadily increasing, and consumers that purchase products and services through unsolicited fax and telephone marketing would no longer be serviced through these channels.

Altering the default choice faced by consumers may impact on the choice that they ultimately make. For example, by framing unsolicited fax or telephone marketing as effectively prohibited, it may be that consumers will decide to not accept fax or telephone marketing as socially acceptable behaviour (whether solicited or not), which in turn may further reduce the effectiveness of these channels. If fax and telephone marketing did not, overall, generate social welfare (for example, if consumers did not behave rationally when faced with a telemarketing call) then it may be appropriate to ‘nudge’ consumer behaviour to preference opting out of these channels. However, on the available evidence it appears that fax and telephone marketing is not necessarily any different or more detrimental compared to other direct marketing practices<sup>31</sup>. Moreover, there are strong consumer laws

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<sup>31</sup> Spam email is one example of a direct marketing channel that can be more detrimental to consumers – in many case the communications is not just unwanted commercial electronic mail, but also a delivery mechanism for malicious computer viruses etc.

in place (such as the Australian Consumer Law) to address issues as they arise.

## **Impact on Government**

Nil.

## **Costs**

The costs identified under Option 4 are the compliance and administration costs associated with businesses understanding their obligations and altering their processes to comply with the new arrangements. This includes costs associated with re-training staff, altering internal processes and seeking legal advice on their obligations. All costs are considered start-up costs. Ongoing activities associated with training, improvements to business processes or record-keeping are considered business-as-usual costs consistent with best practice and are not included for the purposes of this RIS.

Excluding the 510 businesses that undertake fax or telephone marketing as their primary activity, 705 active TAP users would incur costs associated with this option. Based on ACMA data, 37 per cent of active TAP users, or 260 businesses, are in the call centre industry. A further 445 businesses are in other industries. For businesses in the call centre industry, it is assumed that a team leader (based on an award rate under the *Contract Call Centres Award 2010*) would undertake four hours of training for staff, which would include research, preparation of training materials and delivery of training. For the remaining 445 businesses, an average of four hours has been assumed at the default manager's rate.

For changes to processes, it is assumed that two staff members would undertake an average of six hours work to alter internal systems and contact lists. Staffing costs as above have been applied.

In addition, some businesses may incur purchasing costs to seek legal advice on their new obligations. This is considered to apply to larger businesses, as small businesses are unlikely to be able to afford specialised advice and may be more likely to do research themselves or rely on government information. Based on data provided by the ACMA, 145 active TAP users are businesses that employ 200 or more staff. A once-off annual cost of \$2000 is assumed for this legal advice.

Over the projected ten-year period, there would be cost savings for business in not needing to purchase a subscription to access the Register and not undertaking the process of washing contact lists. Businesses would need to maintain records of consumers who have given consent, which is a requirement of the current scheme. For 2012-13 the total cost of the Register through industry washing fees was \$3.6 million.<sup>32</sup>

## **Conclusion**

Option 4 presents substantial indirect costs associated with the negative impact it has on businesses undertaking fax and telephone marketing activities.

The Government considers consumers should also still have a choice as to whether they wish to receive unsolicited fax and telephone marketing. As there are still more consumers not on the Register than there are on the Register, maintaining the Register and the ability

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<sup>32</sup> ACMA, Annual Report 2012-13, p. 63.

for consumers to exercise choice is vital. Furthermore, the additional benefit to consumers of not needing to register a number does not outweigh the impact on businesses in substantially decreasing the marketing channels available to them, particularly new entrants. This option is not considered to strike an appropriate balance between stakeholder interests and does not meet the Government’s objectives. For these reasons, this option is not recommended.

**Option 4: Regulatory Burden and Cost Offset**

**Average annual regulatory costs (from business as usual)**

<b>Change in costs (\$ million)</b>	Business	Community organisations	Individuals	Total change in costs
<b>Total, by sector</b>	\$0.75m	\$0	\$0	\$0.75m
<b>Cost offset (\$ million)</b>	Business	Community organisations	Individuals	Total, by source
<b>Agency</b>	-\$3.6m	\$0	\$0	-\$3.6m

**Are all new costs offset?**

Yes, costs are offset  No, costs are not offset  Deregulatory—no offsets required

**Total (Change in costs – Cost offset) (\$ million) = -\$2.85m**

The regulatory costs identified in the above table reflect the average cost on consumers per year, averaged over a ten year period.

## Consultation

On 6 December 2013 the Department of Communications released a public discussion paper seeking community views on the optimal period of registration on the Register. Submissions closed on 31 January 2014. The discussion paper proposed the four options outlined in this RIS for consideration.

The Department received 1,320 submissions in response to the discussion paper from a range of stakeholders, including those engaged in fax or telephone marketing activities, industry groups, privacy groups, consumer groups and registrants.

The number of responses was indicative that the Register is very popular among consumers and that there are strong views about the inconvenience of having to re-register a number. Specifically, of the 1,320 total submissions received, the overwhelming majority (1,246) supported a move to an indefinite registration period. Furthermore, consumers or consumer advocate groups submitted 1,291 submissions, further demonstrating community attitudes and concerns towards fax or telephone marketing. Many consumers indicated their preference was unlikely to change over time. Consumer and privacy groups also raised concerns that the requirement to re-register could have a particularly detrimental impact on

vulnerable users.

In developing the options, the Department also undertook consultation with the ACMA, as the regulator for the *Do Not Call Register Act 2006* and the Office of the Australian Information Commissioner, as the privacy regulator.

In addition to this consultation process, the issue of the registration period on the Register has previously been considered as follows:

- > The Senate Standing Committee on Environment, Communications and the Arts inquiry on the *Do Not Call Register Legislation Amendment Bill 2009* considered the issue amongst other things. The inquiry considered proposed amendments to extend the Register to include other classes of numbers, such as business numbers, and whether to regulate fax marketing. While the registration period was not included in the terms of reference for the inquiry, the Committee recommended that the Department consider extending the period of registration in its statutory review of the Act, provided the practical difficulties of keeping the Register accurate could be overcome.
- > A statutory review of the *Do Not Call Register Act 2006*, undertaken in 2009 and 2010, which considered the broad operation of the Act and Register. The majority of views supported a longer period of registration than three years. The review report proposed that research be undertaken into ways to reduce the inaccuracy of the Register.
- > Through targeted consultation with key stakeholders.

## Conclusion

The preferred option is an indefinite period of registration, Option 3, which is also the lowest cost option. This means that once an account-holder registers their number it will remain on the Register until removed either by the account-holder requesting its removal or through a cleansing mechanism, if one is introduced.

Consultation concluded there was substantial support from registrants for the removal of the need to re-register. Consumers consider that the need to re-register in the event that a registration period is in place to be an inconvenience and provides no tangible benefit to individuals as community attitudes towards unsolicited marketing have deteriorated. In this regard, the decision individuals initially make when registering on the Register to protect their privacy and avoid unsolicited fax and telephone marketing should be valued.

Many respondents sought to go one step further and remove the need to register and move to an 'opt-in' scheme. However, the move to an opt-in regime (Option 4) would have a detrimental impact on the fax and telephone marketing industry and would not necessarily result in improved consumer welfare. The nature of such an arrangement would favour incumbent businesses over new entrants by preventing new entrants from contacting people to market goods and services by fax or telephone. The existing opt-out model for the Register provides an appropriate balance between allowing these activities to continue, while ensuring individuals can make an explicit choice about whether they wish to receive unsolicited fax and telephone marketing.

Overall, moving to an indefinite registration period maximises the effectiveness of the

Register and achieves the highest net benefit for all stakeholders. It maximises consumers' choice and provides an effective mechanism to address concerns about the intrusiveness and inconvenience of fax and telephone marketing. It also provides the industry with time to adjust business practices and diversify marketing activities in line with emerging international trends and consumer expectations.

## Implementation and evaluation

The preferred option will require an amendment to the *Do Not Call Register Act 2006*. Section 17 of the Act sets out the period of registration for numbers on the Register and will need to be amended. Once the amended legislation comes into effect, the *Do Not Call Register (Duration of Registration) Specification No 1 2010* would no longer be required and would be repealed.

Given the deregulatory nature of the preferred option, the Department is seeking passage of the amendments through the *Telecommunications Deregulation Bill No.1 2014*, which is currently aiming to be introduced during the 2014 Spring sittings. In the event that legislation to amend the Act may not be passed prior to May 2015, when the first registrations will begin to expire, it is proposed that the *Do Not Call Register (Duration of Registration) Specification No 1 2010* is amended to extend the registration period for a further two years. This would avoid the possibility of numbers being removed from the Register. The Department does not consider that extending the registration period from eight to 10 years will result in additional regulatory impacts. Given that businesses and individuals would have no additional obligations as a result of this change, there would be no compliance costs.

The Department is responsible for preparing and monitoring the passage of legislation to extend the registration period. The ACMA, which has responsibility for managing the Register, will implement the proposed changes. This includes communicating to registrants that their registration will be indefinite and how they can remove their number from the Register if desired.

Following implementation of the preferred option, the Department will continue to work closely with the ACMA and liaise with industry stakeholders to measure the ongoing effectiveness of the Register.