



**Telecommunications  
Industry  
Ombudsman**

**John Pinnock  
Ombudsman**

13 June 2006

Dr Ian Holland  
Secretary  
Environment, Communications, Information  
Technology and the Arts  
Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Dr Holland,

Thank you for providing the TIO with the opportunity to offer further comment in relation to the *Inquiry into the Do Not Call Register Bills 2006*.

I would firstly like to reiterate the TIO's continued support for the proposed legislation, previously expressed in our submission of 1 December 2005. Telemarketing is an issue of interest for the TIO. We continue to record significant numbers of complaints relating to unwanted telemarketing calls.

In terms of any additional comments, there are two observations the TIO would like to make. Those observations relate to Sections 11 and 19 of the proposed Bill.

Section 11 of the proposed Bill, amongst other things, allows for a *nominee of the relevant telephone account holder* to consent to a call from a telemarketing company. The Bill does not appear to contain any guidance as to how the authenticity of that nominee is established. In this respect, a telemarketing company may seek to argue that any person who answers the telephone at an address and engages in a conversation could be a nominee for the purposes of the exemption.

The Bill may benefit from some guidance as to how the authenticity of the nominee can be established, to ensure that the relevant telephone account holder's wish to be included on the Register can only be overridden by either themselves or their legitimate nominee.

I make this observation having particular regard to the TIO's experience with complaints relating to the transfer of telephony services and the difficulties in establishing the authenticity of an 'Authorised Representative'. In that context the TIO continues to receive many complaints where a Supplier does not take all sufficient or reasonable steps to confirm that the person agreeing to the transfer has the requisite authority to do so. By not undertaking all reasonable steps to establish the legitimacy of the authorised representative, a Supplier is open to the risk of failing to comply with the relevant industry code.

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Section 19 of the proposed Bill outlines the steps a person seeking to access the Do Not Call Register (“the Register”) must follow when dealing with the Australian Communications and Media Authority (ACMA). It is not clear from the provision whether there is a requirement for the person seeking access to the Register to go through this ‘verification’ process on an ongoing basis.

By way of example, a person may submit a list of telephone numbers at the beginning of a year for comparison with the Register and subsequently receive confirmation from ACMA as to what numbers are listed on the Register. We are concerned that, having fulfilled this legislative requirement, the person may choose to rely on this advice for an extended period of time. The number of telephone numbers submitted to the Register may increase over time, but there appears to be no requirement for that person to interrogate the Register on an ongoing basis. This may inadvertently lead to telephone users who have requested inclusion on the Register after the initial check receiving unwanted telemarketing calls.

If you have any questions or wish to discuss any of these matters further, please contact Phil Warren the TIO’s Acting Policy Manager on 03-8600 8760.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Simon Cleary', with a stylized flourish at the end.

Simon Cleary  
**DEPUTY OMBUDSMAN**