

Submission

To the Senate Environment, Communications,
Information Technology and the Arts Committee



Inquiry into the provisions of the *Do Not Call Register Bill 2006* & the *Do Not Call Register (Consequential Amendments) Bill 2006*

Vodafone Australia Limited ACN 056 161 043

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About this submission

This submission aims to inform the Senate Environment, Communications, Information Technology and the Arts Committee of the potential impact of the Do Not Call Register Bill 2006 on carriers, suppliers of carriage services to the public, and the telemarketing industry. This submission complements Vodafone's submission to the Government's discussion paper on the establishment of a Do Not Call Register and proposes several recommendations for the Committee's consideration.

1. Introduction

- 1.1 Vodafone Australia Limited (**Vodafone**) welcomes this opportunity to provide comments to the Senate Committee Inquiry into the provisions of the *Do Not Call Register Bill 2006 (DNCR Bill)* and the *Do Not Call Register (Consequential Amendments) Bill 2006 (CA Bill)*. In his submission Vodafone explores the impact of the Bills on customers, the telemarketing industry and on Vodafone as a mobile operator. In principle, Vodafone supports the policy objectives of the legislation, being to:
- (a) Provide a more consistent and efficient operating environment for the telemarketing industry;
 - (b) Reduce the inconvenience and intrusiveness of telemarketing calls by enabling people to opt-out of receiving those calls; and
 - (c) Establish an effective complaints handling mechanism to deal with poor telemarketing activities.
- 1.2 Vodafone also supports an efficient regulatory process to introduce the Bills, provided the speed of the process does not compromise transparency and due diligence in undertaking public consultation. Vodafone notes that the current inquiry has been the first opportunity for consultation on the drafted legislation. Vodafone recommends that the Committee take this opportunity to consider the Bills against the following regulatory principles:
- (a) Technology neutrality;
 - (b) Minimising compliance burdens for business;
 - (c) The need for regulatory certainty for business;
 - (d) The proportionality of legislative / regulatory intervention to the identified problem ;

- (e) The requirement for transparency in the legislative process;
 - (f) Outcome based regulation – avoiding overly prescriptive regulation, and minimising duplication and complexity; and
 - (g) The outcomes of a cost / benefit analysis of the proposed regulatory intervention.
- 1.3 Vodafone's existing business practices includes the operation of internal registers which enable the recording and implementation of customer preferences for specific forms of marketing communications from Vodafone. We have the following internal registers; a do not call register, a do not SMS register; and a do not contact register.
- 1.4 Vodafone has systems and processes to ensure that these registers are updated on a daily basis. Vodafone's privacy policy – available at www.vodafone.com.au and forming part of customer standard forms of agreements – provides customers with details on how to opt out of marketing communications. The privacy policy also explains that customer's personal information, including telephone number, collected by Vodafone may be used for the following marketing related purposes:
- (a) carrying out market and product analysis and marketing products and services generally;
 - (b) contacting customers about products and services of the Vodafone group of companies; and
 - (c) registering customer details, allocating or offering customer rewards, discounts or other benefits, and fulfilling requests or requirements customers may have in respect of Vodafone and its group companies' loyalty or reward programmes and other similar schemes.
- 1.5 In addition to Vodafone's marketing activities with existing customers, the legislation also affects Vodafone because:
- (a) We provide carriage services to the public and hold account information in relation to customers;
 - (b) We are subject to the *Telecommunications Act 1997* (**Telecoms Act**) and associated regulations;
 - (c) We make calls to pre-existing customers; and
 - (d) Our dealers make calls to prospective customers.

1.6 This submission separately addresses the provisions of the DNCR Bill and the CA Bill.

2. Executive Summary

Vodafone supports the policy intentions of the DNC legislation, however considers that amendments will be necessary to address ambiguities, inadvertent consequences, impacts on the telecommunications industry and operational challenges. Vodafone's recommendations are summarised below:

Recommendation 1: Vodafone recommends that numbers be automatically removed from the register when they are disconnected. To achieve this, Vodafone recommends that the register be 'washed' daily against the Integrated Public Number Database (IPND) managed by Telstra. The IPND contains information on the connection status of all issued telephone numbers and this information is updated daily.

Recommendation 2: Vodafone recommends that the DNCR Bill and Explanatory Memorandum (EM) clarify that a business relationship is taken to 'exist', for the purposes of inferring consent, while a contract with the customer remains in effect in relation to telecommunications services.

Recommendation 3: Vodafone recommends that the EM be amended to clarify that inferred consent and express consent are not mutually exclusive, and that inferred consent can be relied on in addition to express consent.

Recommendation 4: Vodafone recommends that the EM be amended to clarify that inferred consent is not limited to a specific product, but can be inferred to apply to all marketing communications regardless of the good or service in question.

Recommendation 5: Vodafone recommends that the EM be amended to clarify that organisations may infer consent from pre-existing relationships where that consent is used for the purpose of 'win-back calls'. Again, these calls will be subject to the minimum contact standards and the expected benefit to customers would outweigh any perceived detriment.

Recommendation 6: Vodafone recommends that DNCR Bill and EM be amended so that returned lists from the Do Not Call Register can be relied on for at least 60 days. Alternatively, the fee structure could provide that an organisation will not be charged twice where access to the register is requested more than once within a 60 day time frame.

Recommendation 7: Vodafone recommends that the DNCR Bill and EM be amended to enable organisations to rely on the register (or its keeper) to return the relevant information within 24 hours of receiving a request for that information.

Recommendation 8: Vodafone recommends that the DNCR Bill and EM be amended to ensure that organisations relying on the register do not inadvertently breach the DNCR requirements due to technical and system failures affecting the operation of the register.

Recommendation 9: Vodafone requests that the DNCR Bill and EM be amended to give organisations the option of being able to directly access the register in the same manner as currently provided to the ADMA Do Not Call Register. Many organisations that conduct direct marketing will already have these systems in place. The Bill and EM should also provide for ACMA to determine the hours of operation of the register to provide as much flexibility and availability as possible so as not to disadvantage organisations that choose to access the register on a 'per list' basis.

Recommendation 10: Vodafone recommends that the DNCR Bill and EM be amended to require ACMA to apply principles of cost recovery to fee-setting for access to the register. In addition ACMA's determination of the fees should include mandatory consideration of the frequency of use of the register by various organisations.

Recommendation 11: Vodafone recommends that the DNCR Bill and EM be amended to ensure that only relevant account holders or their nominees are able to register numbers. The Bill and EM should also enable ACMA to reject an application if it is not satisfied that the applicant is the relevant account holder or nominee. The positive obligation on ACMA to register an eligible number should be removed unless ACMA is also required to be satisfied that the applicant is the relevant account holder or nominee.

Recommendation 12: Vodafone recommends that the DNCR Bill be amended to enable ACMA to determine how it will be satisfied that an applicant is the relevant account holder or nominee. The burden of proof should lie with the applicant, and not with carriage service providers. The Bill also needs to be amended to clarify whether ACMA must assess an application that contains mistakes or is missing information.

Recommendation 13: Vodafone recommends that the DNCR Bill and EM be amended to enable ACMA to make determinations, in consultation with stakeholders, relating to how a person can demonstrate that they are the relevant account holder or the relevant nominee, and how an account holder can demonstrate that a nomination has been amended or withdrawn. The burden of proof needs to lie with the account holder / nominee and should not be addressed by imposing any burden on carriage service providers.

Recommendation 14: Vodafone recommends that the DNCR Bill and EM clarify that calls for the purpose of verifying information relating to an existing customer's account are not telemarketing calls.

Recommendation 15: Vodafone recommends that the DNCR Bill and EM clarify that market research calls are not telemarketing calls

Recommendation 16: Vodafone recommends that the DNCR Bill and EM clarify that calls for the purposes of regulatory compliance are not telemarketing calls.

Recommendation 17: Vodafone recommends that the DNCR Bill and EM clarify that calls to existing customers for retention purposes should be excluded.

Recommendation 18: Vodafone recommends that the DNCR Bill and EM clarify that a call is not a telemarketing call simply because an organisation leaves a message with a customer to call a general contact number for the organisation and the customer hears a promotional message while waiting in the call queue on that number.

Recommendation 19: Vodafone recommends that for the purposes of consistency with the CA Bill, the DNCR Bill and EM should require ACMA to exercise its powers under the DNCR Bill in a manner that does not impose undue financial and administrative burdens on applicants or participants in the telemarketing industry. The DNCR Bill and EM should also require ACMA to have regard to the legitimate business interests of the telemarketing industry when making Determinations under the DNCR Bill. In addition the DNCR Bill and EM should require ACMA to consult with affected stakeholders including the telemarketing industry and carriage service providers when making those Determinations.

Recommendation 20: Vodafone recommends that if the intention of the requirement in the CA Bill to enable calling line identification is to enable recipients to identify the calling phone number, that the CA Bill and EM be amended to prohibit the use of unlisted or private numbers to make telemarketing calls.

Recommendation 21: Vodafone recommends that the CA Bill and EM be modified to provide for regular review of the Telemarketing Industry Standard. The amendments should also address the inconsistency between ACMA's obligation to ensure a Telemarketing Standard is always in force, and ACMA's powers under s131 of the Telecoms Act to revoke a Standard at any time. In addition the amendments need to clarify the status of the Standard if the *Do Not Call Register Act 2006* is repealed or superseded in future.

Recommendation 22: Vodafone recommends that any assistance required from carriers for enforcement purposes be cost recoverable under existing arrangements under the Telecoms Act. This ensures that carriers are not bearing the burden of compliance for the telemarketing industry.

Recommendation 23: Vodafone recommends that the CA Bill and EM be amended to require ACMA, when exercising its powers in relation to the telemarketing industry, to exercise them in a manner that will not detrimentally impact the telecommunications industry.

3. Impact of the Do Not Call Register Bill 2006

Phone numbers will remain on the register by default despite change of account holder

- 3.1 The DNCR Bill provides that a registered number remains on the register for three years unless removed earlier. The DNCR Bill does not address the issue of disconnected numbers or recycled numbers. Vodafone is concerned that customers may be issued with recycled numbers – numbers previously used by another person – which are already entered on the register by the previous account holder. In the space of three years, it is possible for a telephone number to be disconnected, quarantined and then reissued to another customer, particularly if the number belonged to a prepaid mobile customer. If this happens, the customer issued with the recycled telephone number is listed on the DNC Register by 'default', and is unable to choose whether, or not, to register the number. This issue also potentially adversely affects carriage service providers if they are required to regularly provide information to the register on disconnected phone numbers.

Recommendation 1: Vodafone recommends that numbers be automatically removed from the register when they are disconnected. To achieve this, Vodafone recommends that the register be 'washed' daily against the Integrated Public Number Database (IPND) managed by Telstra. The IPND contains information on the connection status of all issued telephone numbers and this information is updated daily.

Unreasonable restrictions on ability to infer consent

Need clarity on when an existing business relationship ends for telecommunications customers

- 3.2 Vodafone seeks clarity in the DNCR Bill and EM as to when there is an 'existing business relationship' for the purposes of being able to infer consent. For prepay customers it is common for a 'grace period' to apply after a customer's call credits have expired, enabling the customer to be able to receive calls on their mobile phone number, even though the customer is not able to make calls. For mobile customers on fixed period contracts, it is common for services to continue on a monthly basis until the customer requests that the service be terminated. In both these circumstances the contract with the customer remains in effect, in accordance with Vodafone's Standard Form of Agreement. In these cases Vodafone would expect to be able to infer consent during the grace period – in addition to monthly contract periods.

Recommendation 2: Vodafone recommends that the DNCR Bill and EM clarify that a business relationship is taken to 'exist', for the purposes of inferring consent, while a contract with the customer remains in effect in relation to telecommunications services.

Inferred consent should not be mutually exclusive

- 3.3 The EM to the DNCR Bill provides that express consent to receiving information about certain products does not enable consent to be inferred in relation to promoting other products of the organisation. Contrary to the express text of the DNCR Bill, this passage in the EM suggests that express consent and inferred consent are mutually exclusive. Vodafone does not believe that this was the intention of the Bill.

Recommendation 3: Vodafone recommends that the EM be amended to clarify that inferred consent and express consent are not mutually exclusive, and that inferred consent can be relied on in addition to express consent.

Inferred consent should not be product specific

- 3.4 Vodafone is also concerned with the potential for the DNCR Bill to inadvertently restrict the scope of inferred consent to single products. The mobile telecommunications industry is constantly evolving and introducing new innovative products into the market. Vodafone submits that it should be sufficient that consent can be inferred to receive marketing communications from the relevant organisation, regardless of the products to which that consent relates. Without being able to infer consent to all types of marketing communications, industry would effectively be restricted to marketing only existing products.

Recommendation 4: Vodafone recommends that the EM be amended to clarify that inferred consent is not limited to a specific product, but can be inferred to apply to all marketing communications regardless of the good or service in question.

Inferred consent should be available for 'win-back' calls

- 3.5 Organisations rely on inferred consent from pre-existing relationships so they can contact pre-existing customers for the purposes of 'winning back' the customer's business. The purpose of 'win-back' calls is to the benefit of customers where the customer can be offered a better service in future. These calls also promote competition and encourage organisations to improve processes and offerings for the benefit of customers.

Recommendation 5: Vodafone recommends that the EM be amended to clarify that organisations may infer consent from pre-existing relationships where that consent is used for the purpose of 'win-back' calls. Again, these calls will be subject to the minimum contact standards and the expected benefit to customers would outweigh any perceived detriment.

30 Day Grace Period needs to be extended to at least 60 days

- 3.6 Vodafone is concerned that a person is only able to rely on information from the register for a period of 30 days. Many telemarketing campaigns run for over 30 days. In some cases it may not be possible to get through contact lists with large volumes of numbers within a 30 day timeframe. The grace period should be increased taking into account the duration of most telemarketing campaigns so that organisations are not penalised with additional fees simply

because of the duration of the campaign.

Recommendation 6: Vodafone recommends that DNCR Bill and EM be amended so that returned lists from the Do Not Call Register can be relied on for at least 60 days. Alternatively, the fee structure could provide that an organisation will not be charged twice where access to the register is requested more than once within a 60 day time frame.

Register information must be provided within 24 hours

- 3.7 Vodafone is concerned that the DNCR Bill does not specify when a person making a submission to the register keeper can expect to receive a response from the keeper indicating the numbers which are, or are not, on the register. Organisations which are bound to use the register must be able to rely on the register being able to return information within a designated timeframe. The certainty of these timeframes is critical to enable planning of marketing campaign budgets and timeframes.

Recommendation 7: Vodafone recommends that the DNCR Bill and EM be amended to enable organisations to rely on the register (or its keeper) to return the relevant information within 24 hours of receiving a request for that information.

- 3.8 The DNCR Bill also needs to address how planned and unplanned technical or system outages will be handled to ensure that these outages do not inadvertently place an organisation in breach of the civil penalty provisions. An organisation may require information from the register several times during a campaign where that campaign runs for over 30 days. In these cases organisations should be able to rely on earlier information provided by the register if, on subsequent requests for information, the register experiences an outage that delays the provision of information within that 30 day timeframe.

Recommendation 8: Vodafone recommends that the DNCR Bill and EM be amended to ensure that organisations relying on the register do not inadvertently breach the DNCR requirements due to technical and system failures affecting the operation of the register.

Offer direct access to the Register in addition to 'per list' access

- 3.9 Vodafone submits that if access to the register is limited to a 'per list' basis, this process will cause significant operational costs for organisations that conduct regular telemarketing activities. The proposed process will unnecessarily delay the time required to develop contact lists for marketing campaigns. This is because a preliminary list will need to be developed, submitted to the register, modified from information obtained from the register, and then modified again for those numbers where there is express or inferred consent. In addition the DNCR Bill has not provided for ACMA to determine when access to the register will be available or whether organisations will be restricted to making requests during standard business hours. In contrast, the ACMA Do Not Call Register enables organisations to have direct access to the register so that lists can be washed at any time.

Recommendation 9: Vodafone requests that the DNCR Bill and EM be amended to give organisations the option of being able to directly access the register in the same manner as currently provided to the ADMA Do Not Call Register. Many organisations that conduct direct marketing will already have these systems in place. The Bill and EM should also provide for ACMA to determine the hours of operation of the register to provide as much flexibility and availability as possible so as not to disadvantage organisations that choose to access the register on a 'per list' basis.

- 3.10 Vodafone has processes and systems in place to update its internal do not contact, do not call and do not SMS registers each morning. Having direct access to the Do Not Call Register will enable Vodafone to include washing these lists against the Do Not Call Register on a daily basis as part of Vodafone's existing processes. Vodafone understands that access to the register would need to be secure and the measures will need to be in place to ensure that access is not abused.

Fees and charges should be set on a cost recovery basis only and provide multiple options for payment

- 3.11 The DNCR Bill has not provided any criteria or guidelines for ACMA in relation to how fees for access to the register should be determined. It is important that the DNCR does not subsidise other ACMA activities at the expense of the telemarketing industry. Similarly, the fee structure should not penalise operators on the basis of their frequency of access to the Register.

Recommendation 10: Vodafone recommends that the DNCR Bill and EM be amended to require ACMA to apply principles of cost recovery to fee-setting for access to the register. In addition ACMA's determination of the fees should include mandatory consideration of the frequency of use of the register by various organisations.

ACMA not be able to reject an application where the applicant is not the relevant account holder or nominee.

- 3.12 While the DNCR Bill provides that relevant account holders and nominees may apply to enter a number on the register, the Bill does not specifically exclude any other person from making an application. In addition, the DNCR Bill provides that the only test that must be satisfied for ACMA to register a number is the eligibility test for the number. ACMA is in fact obligated to register the number if it is an eligible number – there is no facility for ACMA to reject an application on grounds of the applicant not being the relevant account holder as there is no requirement for ACMA to be satisfied that the applicant is the relevant account holder or nominee.

Recommendation 11: Vodafone recommends that the DNCR Bill and EM be amended to ensure that only relevant account holders or their nominees are able to register numbers. The Bill and EM should also enable ACMA to reject an application if it is not satisfied that the applicant is the relevant account holder or nominee. The positive obligation on ACMA to register an eligible number should be removed unless ACMA is also required to be satisfied that the applicant is the relevant account holder or nominee.

- 3.13 Vodafone notes that the DNCR Bill does not address the issue of how ACMA is to be satisfied that an applicant is relevant account holder / nominee. Similarly, the Bill is silent on whether ACMA must consider an application if it has not been filled out correctly or completely, is inaccurate or otherwise defective in manner, form or substance.

Recommendation 12: Vodafone recommends that the DNCR Bill and EM be amended to enable ACMA to determine how it will be satisfied that an applicant is the relevant account holder or nominee. The burden of proof should lie with the applicant, and not with carriage service providers. The Bill and EM also need to be amended to clarify whether ACMA must assess an application that contains mistakes or is missing information.

Demonstrating that someone is a nominee or relevant account holder

- 3.14 The DNCR Bill does not specify how a person can demonstrate that they are the relevant account holder or that they have been nominated to be a nominee. Again, the burden of proof should lie with the account holder and nominee, and not the relevant carriage service provider. Similarly, the Bill is silent on how an account holder may demonstrate that they have withdrawn or varied a nomination.

Recommendation 13: Vodafone recommends that the DNCR Bill and EM be amended to enable ACMA to make determinations, in consultation with stakeholders, relating to how a person can demonstrate that they are the relevant account holder or nominee. The Bill and EM should also enable ACMA to determine and how an account holder can demonstrate that a nomination has been amended or withdrawn. The burden of proof needs to lie with the account holder / nominee and should not be addressed by imposing any burden on carriage service providers.

Range of excluded calls needs to be wider and clarified

- 3.15 Vodafone is concerned that the current wording of the DNCR Bill may inadvertently capture the following types of calls as 'telemarketing calls'. Vodafone submits that these types of calls should be excluded from the register.

Verification Calls

- 3.16 The DNCR Bill may inadvertently treat as calls to existing customers for the purpose of verifying

account details, as telemarketing calls.

Recommendation 14: Vodafone recommends that the DNCR Bill and EM clarify that calls for the purpose of verifying information relating to an existing customer's account are not telemarketing calls.

Market Research and Segmentation Calls

- 3.17 Calls for the purposes of market research including market segmentation should remain excluded. These calls will already be subject to minimum contact standards and this level of regulation should be sufficient. Market research is in the public interest and assists organisations in developing products which are innovative and response to consumer needs.

Recommendation 15: Vodafone recommends that the DNCR Bill and EM clarify that market research calls are not telemarketing calls

Calls for the purpose of regulatory compliance

- 3.18 Calls to customers which are required for the purposes of regulatory compliance should be excluded. While this may already be implied, industry would benefit from clarification in the EM.

Recommendation 16: Vodafone recommends that the DNCR Bill and EM clarify that calls for the purposes of regulatory compliance are not telemarketing calls

Retention Calls

- 3.19 Calls to existing customers for retention purposes should be excluded. The purpose of these calls is to assess customer satisfaction levels and to take action to address customer dissatisfaction and may not explicitly fall within the definition of 'telemarketing'. However, in the interests of certainty, the EM should clarify this matter.

Recommendation 17: Vodafone recommends that the DNCR Bill and EM clarify that calls to existing customers for retention purposes should be excluded .

Non-Marketing Calls where return number contains marketing message

- 3.20 In some instances companies may contact customers for non-marketing purposes, for example to update account details or to provide legal information. Where the customer cannot be reached, the company may leave a call return number which is the general contact number for the company. If a customer calls the general contact number, the customer may hear promotional messages while the customer is on hold waiting for a human operator. This is a common practice. Vodafone is concerned that these calls may inadvertently come within the definition of a telemarketing call due to the promotional messages that might be heard on the

call return number. The DNCR Bill and EM needs to make an exclusion for these types of return numbers.

Recommendation 18: Vodafone recommends that the DNCR Bill and EM clarify that a call is not a telemarketing call simply because an organisation leaves a message with a customer to call a general contact number for the organisation and the customer hears a promotional message while waiting in the call queue on that number.

Need to set regulatory policy for exercise of ACMA powers to make Determinations

3.21 Vodafone notes that there are no statements of regulatory policy to guide ACMA's exercise of its powers to determine various operational matters such as the form and manner of applications, fees and refunds and the return of lists. In comparison, the CA Bill provides guides on how ACMA should exercise its powers under the *Do Not Call Register Bill 2006* and Telecoms Act in relation to telemarketing. These operational Determinations will have a direct impact on compliance costs for the telemarketing industry. Accordingly, ACMA should be guided by a set of principles when making these determinations, especially given the short time frame in which ACMA has to make these Determinations.

Recommendation 19: Vodafone recommends that for the purposes of consistency with the CA Bill, the DNCR Bill and EM should require ACMA to exercise its powers under the DNCR Bill in a manner that does not impose undue financial and administrative burdens on applicants or participants in the telemarketing industry. The DNCR Bill and EM should also require ACMA to have regard to the legitimate business interests of the telemarketing industry when making Determinations under the DNCR Bill. In addition the DNCR Bill and EM should require ACMA to consult with affected stakeholders including the telemarketing industry and carriage service providers when making those Determinations.

4. Impact of the Do Not Call (Consequential Amendments) Bill 2006

Calling line identification for telemarketing calls has practical challenges

4.1 Vodafone supports the policy intentions of requiring a participant to ensure that calling line identification (Caller ID) is enabled in respect of the making of telemarketing calls. However Vodafone foresees some practical challenges to achieving this. Firstly this requirement will be inconsistent with the *ACIF C522:2003 Calling Number Display Code* where the telemarketing call is made from a silent number. Vodafone is concerned that participants may not be able to comply with this requirement if they are using unlisted numbers to make telemarketing calls, as carriers are required to offer customers the choice to block Caller ID for calls made from these telephone numbers. If the intention is to require telemarketers to use only listed telephone numbers when making telemarketing calls, this requirement needs to be clarified. In addition,

while enabling Caller ID has practical uses and benefits to mobile phone recipients of calls who are able to have calling number display, it is less useful or practical for customers who receive calls on geographic numbers. Vodafone recommends that the way to address this issue is to prohibit the making of telemarketing calls from unlisted or private numbers.

Recommendation 20: Vodafone recommends that if the intention of the requirement in the CA Bill to enable calling line identification is to enable recipients to identify the calling phone number, that the CA Bill and EM be amended to prohibit the use of unlisted or private numbers to make telemarketing calls.

Requirement for Standard to always be in place is inflexible and inconsistent

- 4.2 Vodafone is concerned that CA Bill places an obligation on ACMA to ensure that a Telemarketing Standard in is in force at all times after Part 2 of the *Do Not Call Register Act* comes into effect. This obligation on ACMA removes any possibility for the Standard to be later repealed or replaced, without amending the Telecoms Act, for example due to legislative harmonisation or the development of an industry code. This provision is also inconsistent with section 131 of the Telecoms Act which confers on ACMA a power to revoke an industry Standard at any time. In addition, the CA Bill has not provided for regular review of the operation of the Standard and has not addressed whether the Standard should still apply if the *Do Not Call Register Act 2006* is repealed.

Recommendation 21: Vodafone recommends that the CA Bill and EM be modified to provide for regular review of the Telemarketing Industry Standard. The amendments should also address the inconsistency between ACMA's obligation to ensure a Telemarketing Standard is always in force, and ACMA's powers under s131 of the Telecoms Act to revoke a Standard at any time. In addition the amendments need to clarify the status of the Standard if the *Do Not Call Register Act 2006* is repealed or superseded in future.

Requirement for ACMA to provide identification assistance – potential burden on carriers

- 4.3 The CA Bill provides that if complaints are received by ACMA about contraventions of telemarketing codes, standards or the *Do Not Call Register Act 2006*, and those complaints do not include sufficient information to identify the caller, ACMA has a duty to assist the complainant identify the caller or the 'causer' of the complaint. ACMA also has an obligation to take reasonable steps to provide appropriate assistance to the complainant. In performing this function, we recommend that ACMA requests for assistance from carriers be limited to the existing arrangements under sections 313 and 314 of the Telecoms Act which enable carriers to recover costs for providing such assistance for the enforcement of laws imposing pecuniary penalties. This ensures that carriers are not bearing the burden of compliance for the telemarketing industry.

Recommendation 22: Vodafone recommends that any assistance required from carriers for enforcement purposes be cost recoverable under existing arrangements under the Telecoms Act. This ensures that carriers are not bearing the burden of compliance for the telemarketing industry.

Regulatory policy should require ACMA to consider undue burden on telecommunications industry

- 4.4 Vodafone is concerned that the regulatory policy guiding ACMA's exercise of its powers under Part 6 of the Telecoms Act do not specify requirements that ACMA must take into account the potential costs to the telecommunications industry – and specifically to carriage service providers. For example, Codes and Standards relating to record keeping practices to be followed in relation to making calls should not place an unnecessary burden on carriage service providers, for example to keep records of unconnected 'missed' calls.

Recommendation 23: Vodafone recommends that the CA Bill and EM be amended to require ACMA, when exercising its powers in relation to the telemarketing industry, to exercise them in a manner that will not detrimentally impact the telecommunications industry.