

6 February 2014

Mr Tristan Kathage
Director
Cloud Computing and Privacy
Department of Communications
[REDACTED]
[REDACTED]
[REDACTED]



**Telecommunications
Industry
Ombudsman**

Simon Cohen
Ombudsman

Dear Mr Kathage

Discussion paper: Optimal period of Registration on the Do Not Call Register

Thank you for providing the Telecommunications Industry Ombudsman (TIO) with the opportunity to contribute to the Department's consideration of the optimal period of Registration on the Do Not Call Register.

We enclose our submission for consideration by the Department. This submission sets out:

- a) an overview of TIO complaints and enquiries data and issues relevant to the Do Not Call Register and telemarketing practices in general
- b) our response to the questions in the discussion paper, to the extent these are relevant to the TIO's experience, and
- c) TIO Position Statement on Telemarketing in Appendix A.

We trust that the information in this submission will assist the Department in its consideration of the optimal period of registration of the Do Not Call Register.

[REDACTED]
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Yours sincerely

David Brockman
Executive Director – Industry, Community & Government

"... providing independent, just, informal and speedy resolution of complaints"

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**Telecommunications Industry
Ombudsman:
Submission on the optimal period of
registration on the Do Not Call Register**

February 2014



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About the TIO

The Telecommunications Industry Ombudsman (TIO) is authorised under Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to provide an independent alternative dispute resolution service for small business and residential consumers in Australia who have a complaint about their telecommunications services.

We aim to resolve these complaints quickly in a fair, independent and informal way, having regard not only to the law and to good industry practice, but also to what is fair and reasonable in all the circumstances. Before the TIO becomes involved in a complaint, the service provider is given an opportunity to resolve the complaint with its customer.

We are independent of telecommunications companies, consumer groups and government.

For most complaints we receive, we establish the issues in dispute and the resolution sought, and then refer the consumer or small business to a designated point of contact at the relevant telephone or internet service provider. The provider is given a final opportunity to resolve the matter directly with the consumer, without the TIO's direct involvement. Around 90% of complaints we receive each year are resolved at this stage of the process.

Where the consumer and service provider do not reach an agreement at this early stage, the TIO becomes more directly involved by seeking to conciliate an agreed resolution between the parties. Around 7% of complaints are resolved using this conciliation process.

Complaints that cannot be resolved by conciliation are escalated for formal investigation by the TIO. If the complaint remains unresolved after formal investigation and the TIO is of the view that it would be fair and reasonable to do so, the TIO can make binding determinations up to a value of \$50,000 and non-binding recommendations up to a value of \$100,000 in respect of each complaint.

We record complaints according to service types – internet, mobile, landline and mobile premium services (MPS), and by the types of issues that these complaints present. These issues include connection delays and fault repair, credit management disputes, contractual disputes, customer service/complaint handling and billing disputes. Every complaint involves at least one issue. Some complaints can involve multiple issues – for example, a complaint about a delay in rectifying a faulty landline service may also involve a claim that the consumer's complaint about this fault was not acknowledged or escalated (a complaint handling issue).

Further information about the TIO is available at www.tio.com.au.

TIO submission on the optimal period of registration on the Do Not Call Register

The TIO welcomes the opportunity to comment on the Department of Communication's optimal period of registration on the Do Not Call Register (DNCR) discussion paper dated December 2013.

The TIO recognises the effectiveness of the DNCR as evidenced by the relatively low number of TIO complaints and enquiries about telemarketing practices in comparison to the overall count of cases in the recent years.

The TIO has received more than 1,000 complaints and enquiries about telemarketing practices in each financial year since the DNCR was established in 2007. In most situations, where the consumer's circumstances are covered by the legislation, we refer these cases to the DNCR. However, we have also identified poor telemarketing practices as an intermediary for a number of complaint issues which have so far triggered 14 systemic investigations and several referrals to the Australian Communications and Media Authority (ACMA) and Australian Competition and Consumer Commission (ACCC) in the last 18 months.

The TIO is concerned about the level of consumer awareness about the need to re-register their numbers under the current arrangement. This is supported by our complaint data which indicates a high increase in the number of consumer enquiries about receiving telemarketing contacts after the initial registration period lapsed in May 2010.

Our complaint data and the ACMA data on the number of DNCR registrations and complaints in recent years also suggests that there is still a high number of consumers who have concerns about receiving unsolicited telemarketing calls and faxes.

As such, the TIO maintains the view that a number should remain on the register for as long as that number is connected in the name of consumer by whom it was registered and supports the option to maintain the DNCR with indefinite registration period. This is consistent with our initial position prior to the establishment of the DNCR in our submission to the Department dated December 2005.

We set out in this submission:

- a) an overview of TIO complaints and enquiries data and issues relevant to the Do Not Call Register and telemarketing practices in general
- b) our response to the questions in the discussion paper, to the extent these are relevant to the TIO's experience, and
- c) TIO Position Statement on Telemarketing in Appendix A

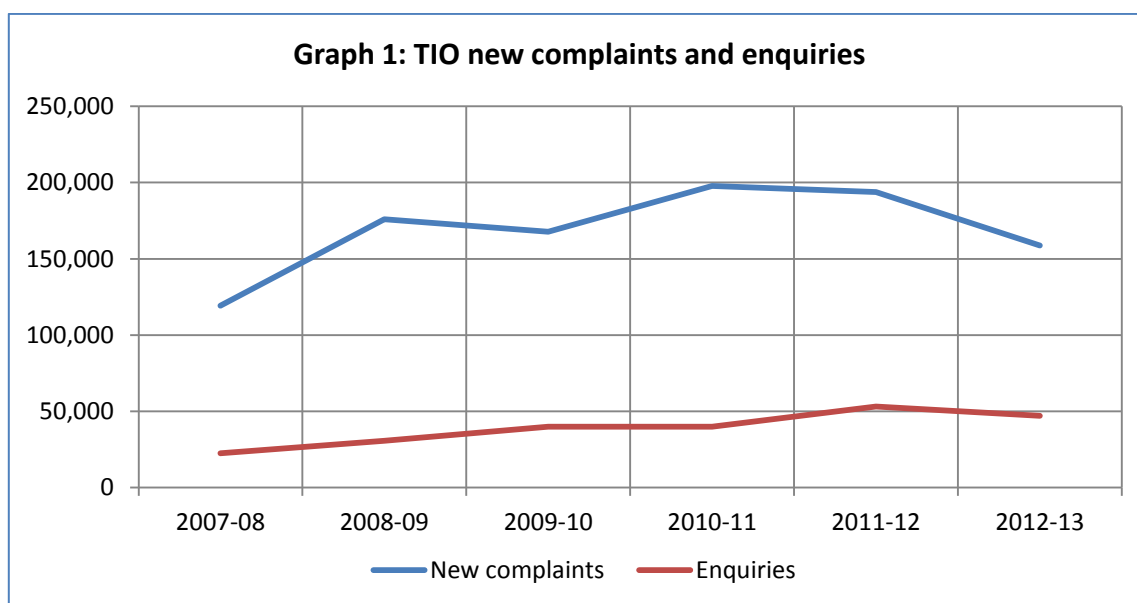
We trust that the information in this submission will assist the Department in its consideration of the optimal period of registration of the Do Not Call Register.

Complaints to the TIO

Overall trends for new complaints and enquiries

When a consumer – residential or small business – contacts us about an expression of grievance or dissatisfaction about a matter within the TIO’s jurisdiction that the service provider has had an opportunity to consider, we record this as a ‘new complaint’. The TIO records an ‘enquiry’ when a person contacts us about something we cannot deal with directly - including when the person has not contacted their provider or complains about something outside the TIO’s functions and powers.

Graph 1 shows the total number of new complaints and enquiries to the TIO over the last six financial years.



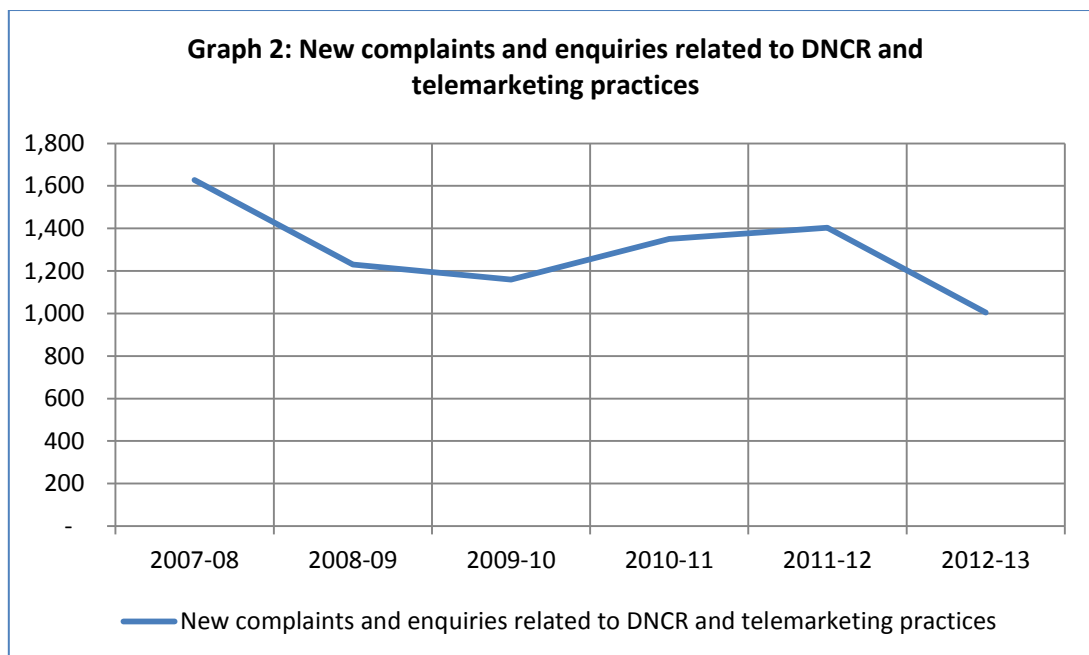
Complaints and enquiries related to DNCR and Telemarketing practices

The TIO position statement on Telemarketing defines telemarketing as:

“...contact, via a telecommunications service, from an individual or organisation whose aim is to supply, provide, advertise or promote goods and services. Telemarketing can be conducted by a telephone call to a landline, mobile or VoIP number, by a short message (SMS or text) to a mobile telephone number, by fax to a fax number, or via the Internet by email or other means.”

This statement is derived from telecommunications industry codes registered by ACMA.¹ These codes benchmark good practice in relation to telecommunication activities and industry participants, and allow us to consider some complaints that are not covered by the Do Not Call register legislation, as long as they are within our jurisdiction. For example, the TIO may look at complaints made by small businesses.

¹ See “Consumer Transfer” chapters of ACIF C628:2007 and C628:2007 and “Consumer Sales, Service, and Contracts” chapter of C628:2012, available from Communications Alliance website, <http://www.commsalliance.com.au/>



Graph 2 illustrates the number of complaints and enquiries about telemarketing practices received by the TIO in the last six financial years. The TIO received more than 1,000 complaints and enquiries about telemarketing practices in each financial year since the DNCR was established in 2007.

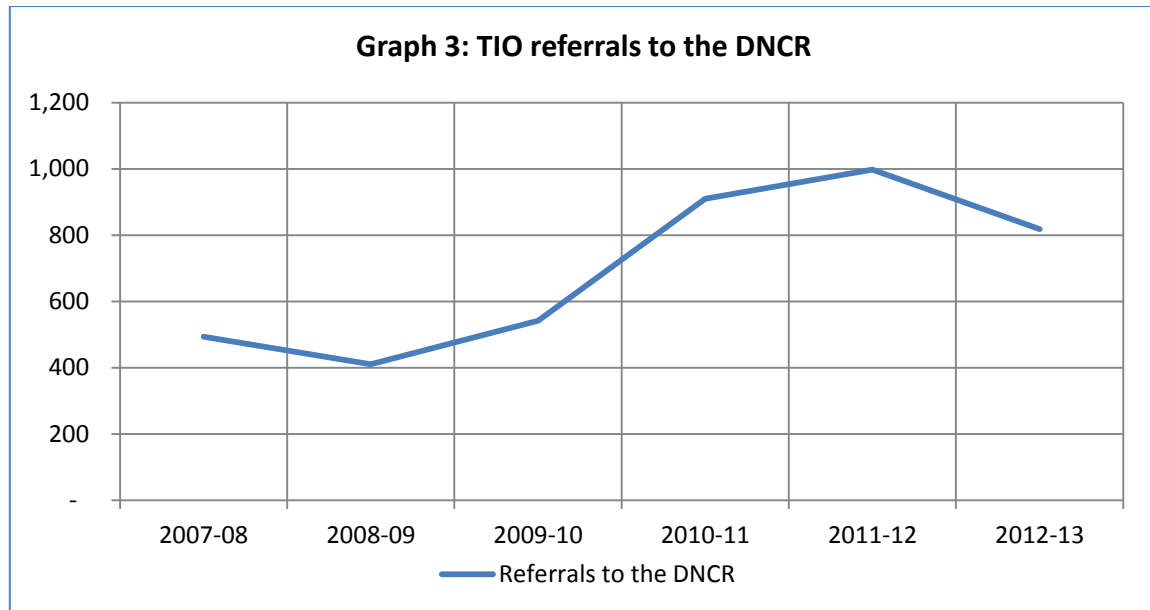
Complaints about telemarketing

The TIO may register a 'new complaint' if a service provider contacts a consumer who has made a request to the service provider not to receive direct marketing communications from it. The majority of complaints in this category are registered by consumers who had not or just recently registered their services with the DNCR.

Enquiries about the receipt of telemarketing calls

The TIO may register an enquiry if a consumer received telemarketing calls and contacted us for general advice on how to deal with unwanted telemarketing calls. They include enquiries from consumers who have registered their number on the DNCR, or where their registrations with the DNCR have lapsed. Some consumers also seek the TIO's assistance to be put in contact with the complaint areas of the calling telecommunications service providers.

In most situations we refer these cases to the DNCR where the consumer's circumstances are relevant and covered by the legislation. Between 2007-08 and 2009-10 the TIO referred on average 482 consumers in each financial year to the DNCR. This annual average increased to 909 consumers in the last three financial years. The number of TIO referrals to the DNCR is captured in Graph 3.



Other enquiries about the DNCR

The TIO may register an enquiry if a consumer seeks general advice on the operation of the DNCR, including queries about businesses being ineligible to register or certain organisations being exempt.

TIO Systemic Investigations on poor telemarketing practices

While most cases we receive on telemarketing are related to a consumer's inconvenience and concerns about the circumstances of the calls, such as the time they received the call or the contact information the telemarketer provided, we have also identified poor telemarketing practices as an intermediary for issues such as:

- misrepresentation of the calling service providers' association with larger service providers to consumers during unsolicited sales calls
- failure to adequately inform consumers of their rights to terminate an unsolicited consumer agreement during the cooling-off period
- failure to provide required termination information in the agreement document, and
- transfers of telephone services without the informed consent of legal lessees or their authorised representatives.

In the last 18 months, the TIO has commenced 14 investigations into potential systemic problems relating to the above issues, and referred a number of these cases to the ACMA and ACCC.

Responses to specific questions in the Discussion Paper

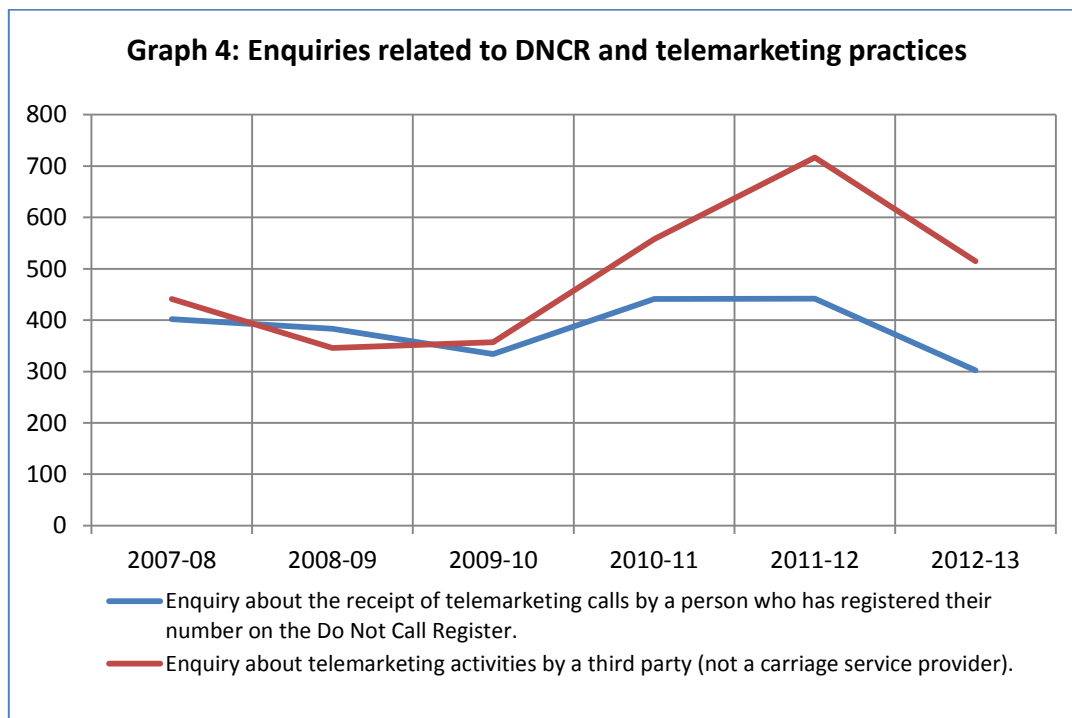
The Department seeks responses to the issues and questions posed in the Discussion Paper relating to the optimal period of registration on the DNCR. We outline below our responses to those questions that are relevant to our experience.

Option 1: Reduce the period of registration to three years

1) Would a three year registration period negatively affect consumers? How? Would this option disproportionately impact on vulnerable consumers? How?

As one of the potential impacts on consumers under this option, the Discussion Paper suggests that account-holders who receive telemarketing calls or marketing faxes after the registration of their numbers have lapsed may complain to the ACMA in the mistaken belief that their numbers are still on the Register. Some account-holders may remain unaware of the need to re-register their numbers, and may begin to receive unsolicited telemarketing calls or marketing faxes.

The Department's observation is supported by our data which shows that the number of consumer enquiries about receiving telemarketing contacts increased immediately after the initial registration period lapsed in May 2010 as illustrated in Graph 4. In the financial year 2010-11, the total number of enquiries under these categories increased by 45% from the previous financial year. This was followed by a further increase of 16% in the following financial year.



As such, if any of the options with a definite registration period is implemented, we strongly support the proposal of an ongoing education campaign by the ACMA to inform and remind account-holders about the need to re-register.

Option 2: Retain the current eight year registration period

4) Is there a significant difference between the eight year registration period and indefinite registration, from the perspective of: a. account-holders registering their numbers? b. the telemarketing and fax marketing industries washing numbers against the Register?

The impact of a shorter registration period has been illustrated above and supported by our data. While any issues related to the current registration period of eight years may not be apparent until May 2015, we agree with the Department's view that a longer registration period may mean consumers are even less likely to remember the need of re-register.

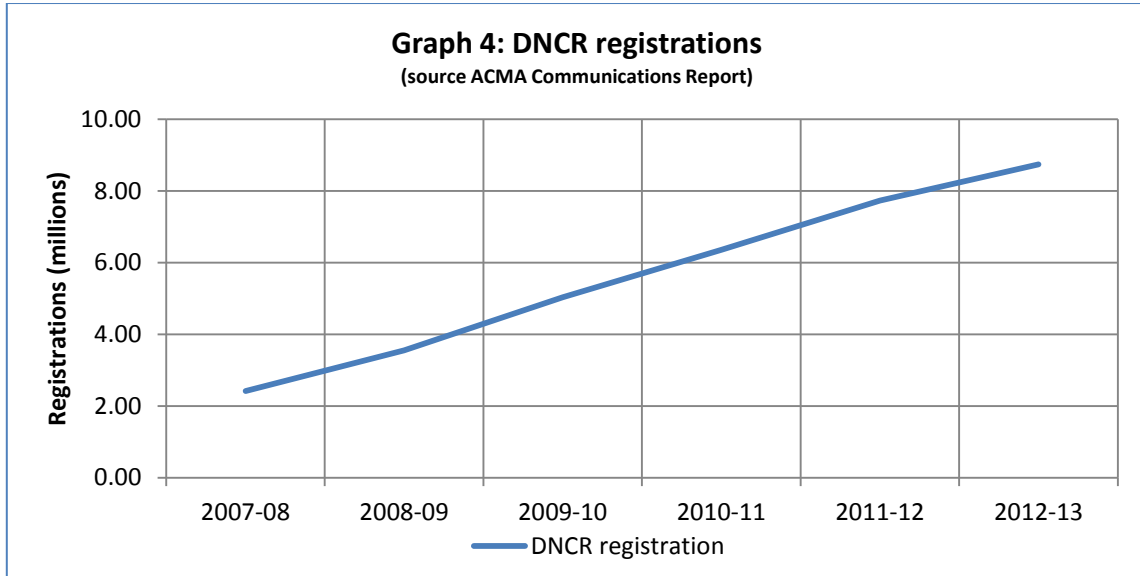
The Discussion Paper has reflected a number of potential impacts of an inaccurate register from the perspective of consumers and industry. It has also identified a cleansing mechanism as a way to improve the accuracy of the register and highlighted that an effective cleansing mechanism would reduce the possibility that the industry will contact a person who does not want to be contacted and is unlikely to make a purchase. As suggested in the Discussion Paper, we support the Department's view that the benefit brought by an effective cleansing mechanism can be further enhanced by implementing the option with an indefinite registration period.

Option 3: Extend the registration period to indefinite

6) To what degree do consumers want to receive unsolicited telemarketing calls and marketing faxes?

Our complaint data and the ACMA data on the number of DNCR registrations and complaints in recent years suggest that there are still a high number of consumers who have concerns about receiving unsolicited telemarketing calls and faxes.

The recently released ACMA Communications Report shows that more than one million numbers were added to the DNCR in 2012-13, taking the total number of registrations to about 9 million numbers. This follows a consistent increase of at least one million numbers every year since the DNCR was established in 2007, as seen below in Graph 4. The same section of the Communications Report also indicates that the ACMA received around 20,000 DNCR complaints in the last three financial years, or double the average in each of the first three years of the DNCR operation.



Appendix 1

TIO Position Statement: Telemarketing

INTRODUCTION

The Telecommunications Industry Ombudsman (TIO) receives many complaints about telemarketing calls. Consumers either say that they want these calls to stop because they interrupt their daily activities, or they raise concerns about the circumstances of the call, e.g. the time they received the call or the contact information the telemarketer provided.

DEFINITION

Telemarketing is contact, via a telecommunications service, from an individual or organization whose aim is to supply, provide, advertise or promote goods and services.

Telemarketing can be conducted by a telephone call to a landline, mobile or VoIP number, by a short message (SMS or text) to a mobile telephone number, by fax to a fax number, or via the Internet by email or other means.

THE TIO'S JURISDICTION

Our power to investigate complaints about telemarketing is limited.

In the first instance, we only investigate complaints that the government's Do Not Call Register Operator cannot register and investigate.

THE DO NOT CALL REGISTER

People who use their Australian landline, mobile or VoIP numbers for private or domestic purposes can add their numbers to the government's Do Not Call Register. The numbers can also be fax numbers, for private or business use.

It is against the law for certain organisations to make unsolicited telemarketing calls to a number on the Do Not Call Register.

We refer callers to the Do Not Call Register Operator if:

- they are eligible to register their number, i.e. their number is an Australian residential number for voice calls, or
- they have registered their number but continue to receive calls from organisations whose activities are covered by the register, or
- they do not object to receiving telemarketing calls but have concerns about the circumstances of the call, e.g. the time they received the call or the contact information the caller provided.

Contact details for the Do Not Call Register Operator are:

Telephone: 1300 792 958
Website: www.donotcall.gov.au

WHEN THE TIO CAN HANDLE COMPLAINTS ABOUT TELEMARKETING

We will only register a complaint if:

1. a consumer cannot add their number to the Do Not Call Register, e.g. it is a business number for voice purposes, or
2. the Do Not Call Register Operator has decided that the content of a call cannot be defined as telemarketing activity or the organisation that made the call is exempt from the prohibition on making telemarketing calls.

If the above applies, we handle complaints if a consumer requires help:

- from their telephone or internet service provider to deal with repeated unwelcome contact from a party offering non-telecommunications goods and services, or
- to stop receiving repeated unwelcome contact from a telephone or internet service provider, if that provider is a registered TIO member.

HOW WE HANDLE COMPLAINTS ABOUT TELEMARKETING OF NON-TELECOMMUNICATIONS GOODS AND SERVICES

When we receive a complaint about telemarketing contact from a party offering non-telecommunications goods and services, we ask the consumer if they asked the telemarketer to stop calling or faxing their number.

If they claim they did, but that the telemarketer continued to contact them after this, we refer the consumer to the customer service area of their telecommunications service provider to deal with the complaint in the same way it deals with complaints about unwelcome calls.

The rules for service providers for dealing with complaints about unwelcome calls are in the telecommunications code of practice, Handling of Life Threatening & Unwelcome Calls.

If a consumer claims not to be satisfied with their service provider's response to their report of an unwelcome call from a telemarketer, we would investigate their complaint as we do other complaints about unwelcome calls. See our position statement: Unwelcome and life threatening calls.

If the consumer did not ask the telemarketer to stop calling, we suggest to them that they wait until the same telemarketer contacts them again, then:

- ask for and record the telemarketer's name and contact details
- ask the telemarketer to stop calling or faxing their number, and
- if the telemarketer calls again, call their telephone service provider to handle the same way it deals with other complaints about unwelcome calls.

HOW WE HANDLE COMPLAINTS ABOUT TELEMARKETING BY TELEPHONE OR INTERNET SERVICE PROVIDERS THAT ARE REGISTERED TIO MEMBERS

If a complaint is about a TIO member continuing telemarketing contact, we register the complaint against that company (even if it is not the consumer's service provider).

We refer the consumer to a senior level of complaint, so it can organise to remove their contact details from the company's sales and marketing lists.

If the consumer claims not to be satisfied with the company's response to their request or if the telemarketing continues, we would take the complaint further.

OTHER CALL TYPES

Calls with no-one on the end of the line cannot be classified as telemarketing calls, because there is nothing to indicate whether any good or service is being offered to the consumer. The TIO classifies and handles this type of complaint as a standard unwelcome call complaint.

Missed call marketing: sometimes consumers claim that, when they returned a 1- or 2-ring call by dialling the number on their mobile telephone's missed call list, the number they called was for a party selling goods and services. We refer these complaints to the Australian Communications & Media Authority (ACMA) or the relevant department of Fair Trading or Consumer Affairs. But we also advise consumers that we can handle their complaint as an unwelcome call if they continue to receive missed call marketing from the same party. For more see 2006 ACMA media release.

Spam email: we refer most complaints about spam to ACMA, which has special procedures for dealing with spammers. For more, see ACMA's spam page www.acma.gov.au.