

**COMMUNICATIONS
ALLIANCE LTD**



**POTENTIAL FOR INDUSTRY SELF-REGULATION OF
THE INTEGRATED PUBLIC NUMBER DATABASE,
THE DO NOT CALL REGISTER AND COMMERCIAL
ELECTRONIC MESSAGES**

COMMUNICATIONS ALLIANCE SUBMISSION

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INTRODUCTION

Communications Alliance (CA) welcomes the opportunity to provide this submission. It follows on from earlier discussions held with the Department of Communications and the Arts (DoCA) and the Australian Communications and Media Authority (ACMA) as part of the governments' deregulation process.

In preparing this submission, consideration has been given to the ongoing process of CA / industry assuming the management of telecommunications numbering. There will be many learnings taken from this process which would certainly be beneficial to review prior to any similar undertakings being taken regarding the functions being addressed in the consultation paper.

CA propose the transfer of telecommunications numbering arrangements be fully finalised and in operation before industry seek to focus on a proposed self-regulation of the IPND / DNCR.

Industry are of the opinion that the current monitoring and enforcement activities performed by the ACMA in relation to the Spam Act 2003 are working quite well and they do not see a role in self-regulating these functions.

About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

SECTION 1 – FUNCTIONS FOR CONSIDERATION

In keeping with the format of the ACMA consultation paper, this submission seeks to answer each of the questions posed in relation to the functions for consideration.

Integrated Public Number Database (IPND)

As noted in the consultation paper, the Integrated Public Number Database (IPND) is an industry-wide database of all Public Number Customer Data (PNCD) which facilitates the provision of information for purposes specified in the Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Licence Conditions) including the provision of Directory Assistance Services and the publication and maintenance of Public Number Directories.

The IPND serves as a repository of PNCD which broadly includes the Number, the Customer name, service address and Directory Related Services information which can be used, for example, to assist in the provision of emergency services and law enforcement. The IPND is also a passive database whereby the IPND Manager facilitates the passage of data from Data Providers to Data Users. All Data Users are charged an annual subscription charge, a communication charge and an encryption device charge to access PNCD from the IPND. Data Providers are not charged to send PNCD to the IPND.

1. What are the community and key stakeholder expectations concerning the IPND?

Whilst there may be consumer groups or individuals with an interest in the IPND, general feedback from Carriage Service Providers (CSPs) is that as long as data is accurate, secure and the platform is stable, most individuals will be unaware of its function. Expectations of the role of the IPND and its operation are more likely to come from key industry stakeholders such as data providers and data users than from the community as a whole.

A key function of the IPND is the significant role it plays in public safety with its use by the Emergency Call Person, for Emergency Alerts and as an investigation tool for enforcement agencies. Regardless of who manages it, the IPND must be readily available to critical data users and always be secure, stable and accurate.

2. What are the potential benefits and costs associated with industry taking on additional responsibilities relating to the IPND?

Benefits to industry taking on the responsibilities of the governance of the IPND are more likely to be in the form of:

- faster and more efficient decision making for new requirements to keep pace with changes in the telecommunications industry;
- ensuring that with any changes made to the management or technical solutions the solution considers the total costs associated with any change, including those to data providers and data users; and
- systems solution synergies which may arise if the IPND and Do Not Call Register (DNCR) databases were combined as one (e.g. improved error handling, data quality and currency, alignment of data validation), as well as opportunities to modernise and upgrade the IPND and DNCR function.

As with any IT functionality changes, costs would be incurred with the development and implementation of any changes to the technical solution and industry would need to

ensure that taking over the functional management of the IPND and DNCR did not add increased costs for industry members or potentially new or complex processes for consumers.

Determining the costs would be dependent on the final details of any solution proposed, but the costs for data providers are likely to be substantial, especially to enable current systems to interface with a new IPND and/or potentially a combined IPND / DNCR database. In addition to the potential changes in oversight of the IPND, there will also be IT functionality changes and costs associated not only with the development and implementation of a potential single IPND-DNCR database but also ongoing maintenance and management costs. These IT functionality changes will impose significant costs on existing data providers and data user's IT systems, to enable them to accommodate the sending and receiving of customer information to/from a combined IPND and DNCR database.

It is not clear as to what functions may pass from the ACMA to industry under any future self-regulatory arrangement for the IPND (or a potentially combined IPND and DNCR), and therefore any new arrangement needs to undertake detailed design work on an industry scheme with detailed costings for the solution costs, current income and likely future income.

As an example, currently the ACMA regulates (and enforces) who must send PNCD to the IPND and who can access PNCD from the IPND (under the IPND Scheme). It is assumed that this function could be managed by industry as part of the self-regulatory scheme. This function could fit nicely into the proposed CA operations body that is currently being established as part of the industry managed numbering scheme. However, industry members would be keen to understand the work load that industry might be expected to undertake and resource requirements, and ensure that any function that was passed on to industry as part of the self-regulatory scheme did not add a cost burden that was not offset by income from the solution, or from reductions in other costs, such as reduced licence fees.

Apart from these costs and those mentioned in the proposed solutions to DNCR below, a more detailed understanding of the current contractual arrangements in place for both the IPND and DNCR would need to be explored and assessed before industry takes on these additional costs, responsibilities and functions.

3. Would any potential benefit to industry arising from assuming additional responsibilities relating to the IPND align with the public interest?

Consumer groups constantly seek certainty around security and accuracy of customer data and the ability for services to be well priced and at as reasonable a price as possible.

The benefits of synergies available by combining IPND and DNCR databases, along with the potential to clean up existing data, the possibilities of minimising ongoing costs, and the agility and innovation industry can offer by self-regulating are certain to be factors aligned with the public interest.

Consumers would benefit from greater transparency and ease of updating their DNCR record and the telemarketing industry would have access to far more reliable data. For example, under the Privacy Act, consumers are entitled to seek access to their information in order to determine accuracy of their customer data. A recent change to the IPND Code¹ provides consumers with the ability to obtain a copy of their IPND record through their CSP. This change now provides customers with the ability to not only review their IPND (and possibly their DNCR preference) but also the ability to amend their IPND and DNCR record via their CSP.

¹ <http://www.commsalliance.com.au/Documents/releases/2017-media-release-35>

4. Is there an appropriate body (or bodies) to assume additional responsibilities relating to the IPND? Is there agreement about what that body is and its capacity to assume those responsibilities?

It is not clear as to what roles, functions and responsibilities an appropriate body or committee needs to take on, as the current IPND regulatory environment includes the IPND Scheme, the Telecommunications (Emergency Call Service) Determination 2009 and the recently ACMA registered IPND Code and Data Guideline. Currently the ACMA is responsible for compliance. The consultation paper does not indicate if any compliance activities in respect to these obligations will be devolved to an appropriate body or committee. A self-regulatory model would need to consider issues such as: -

- What will the governance structure look like and who will participate?
- Who will undertake the function of compliance auditing against the obligations?
- Who will undertake and gather evidence if a non-compliance event occurs?
- Who will instigate any potential court actions in response to the non-compliance?
- Who would be responsible if there is a privacy/data breach?

The appropriate body or committee would need to develop working arrangements as well as establish terms of reference with a high-level focus on core policies and strategies, coordination and technology development with existing and new industry stakeholders and still maintain a secure environment.

One possible solution could be the establishment of an appropriate body or committee similar in function to that proposed by DoCA for the Triple Zero Coordination Committee. The establishment of an appropriate body or committee would guide the IPND Manager in such issues as technology development, new data users, and initiatives to improve data quality.

Another potential body or committee is the process underway by CA in setting up an operational body – Communications Alliance Operations Ltd (CA Ops Ltd) to support the arrangements required as part of implementing an industry managed numbering scheme. In considering the establishment of this subsidiary company CA always considered that CA Ops Ltd would be well placed to take on a broader role and in particular could take on support of an outsourced IPND and DNCR.

There are many benefits which have already been explored by the Numbering Steering Group in the establishment of CA Ops Ltd such as leveraging existing CA resources and processes to minimise ongoing costs, alignment with related CA activities and timely and robust decision making.

There is an in-principle agreement within CA membership that this body could assume the operational responsibilities associated with the IPND and DNCR.

Before committing to such an arrangement, CA and industry would need to finalise the transfer of numbering to CA Ops Ltd and assess any lessons learnt before further investigating the full ramifications of any additional self-regulation opportunities related to the IPND and DNCR.

5. What would be the potential model/s for greater industry management of the IPND? Are there actual or perceived impediments to this approach? What are the stakeholder views in relation to the potential options outlined in this part?

CA would look to a similar model as proposed for the outsourcing of number management

to an industry based scheme, i.e. a bill would be put to the parliament to allow the Minister to outsource the management of the IPND and DNCR to an industry based body or committee that included support for industry taking on the role of managing the scheme through industry rules that would replace existing ACMA Standards and Industry Codes.

CA would then undertake to take on management of the technical solutions and redevelop the necessary rules in support of the industry managed scheme. In this proposed scenario, CA would:

- become the "IPND and DNCR scheme manager" as defined in the Bill;
- make and enforce rules about the IPND and DNCR; and
- be required to operate in a manner consistent with the principles in the Bill.

Assuming such a Bill was put forward, CA would seek to engage with DoCA to assist in developing the Bill. CA would create and submit a formal proposal to the Minister for his consideration. The Minister could then determine, via legislative instrument, that CA would become the IPND and DNCR scheme manager (a separate function to the IPND Manager who would continue to manage the day-to-day operation of the IPND) and take on an overarching governance responsibility. This submission to the Minister would only occur after appropriate consultation is completed with regulatory and industry stakeholders and the public.

CA is expecting the proposal to be beneficial for both consumers and industry stakeholders because it will rationalise resources and streamline processes to reduce the costs of services to consumers, and improve the agility of industry to respond to industry and customer needs. The new arrangements will also provide greater flexibility for adapting to future needs and ensure that DNCR data quality was significantly improved. Industry has self-interest in ensuring that the IPND and DNCR is managed and run in the most practical and cost-effective way for the benefit of consumers and the industry.

CA notes that industry has a great deal of experience and track record in managing many aspects of numbering and other highly technical solutions, for example:

- sixteen years of operating numbering allocation and porting functions for inbound (13/1300/1800) and premium (19nn) numbers through INMS;
- working together in the relevant number portability administration groups to develop, implement and ensure the efficient delivery of number portability;
- industry entities being able to work cooperatively to deliver efficient services for their customers and end users without impacting the high level of competition within the industry, e.g. agreeing on and implementing a solution on the number that would be used for the National Emergency Warning Service; and
- the ability of industry to resolve urgent numbering problems when needed, such as the rapid rearranging of number assignments so that customers associated with a failed company continue to have service.

CA also notes that the internet runs on the basis of industry arrangements for the management of IP addresses, domain names, etc. There is no reason why a similar approach cannot work for the IPND and DNCR. Industry has an established protocol for developing and implementing Industry Codes, Guidelines and Standards. CA recently completed the review of the IPND Code (the Code) (which has been registered by the ACMA), Data Guideline and a new Guidance Note in response to DoCA's IPND Review and submissions. The changes to the Code, Guideline and Guidance Note include:

- improving data quality;
- clarifying the industry preferred approach for customers to access their PNCD via their CSP to easily view and correct their IPND records;
- the establishment of awareness raising measures to communicate to customers the importance and need for providing correct information to their CSP, in order to ensure the IPND record is accurate; and
- giving the Telecommunications Industry Ombudsman the power to handle complaints under the Code.

The Code reflects practices that are the only achievable and practical approach to dealing with these matters. Carriage Service Providers will now have a period of 6 months to implement the new processes included in the Code. The work undertaken by industry to deliver a workable and practical Code demonstrates its ability to change and a willingness to meet consumer demands and changes in public policy. Any change to the current arrangements will need to be able to demonstrate similar outcomes.

Industry also produces guidance notes that deal with both day to day operations of telecommunications activities and a wide array of processes in support of consumer needs.

6. Are there any other issues relevant to the consideration of whether there could be greater industry involvement in the IPND?

CA believes that apart from further investigation of the costings, management and access issues identified in this submission, discussions need to be undertaken between key stakeholders and the ACMA to better understand who would: -

- be responsible for monitoring, compliance and auditing;
- undertake enforcement of any non-compliance;
- decide on what future purpose and/or function/s the IPND would perform; and
- be responsible for funding arrangements.

While industry could seek to take over some of these duties such as auditing and monitoring of the systems and processes, difficulties can arise when it comes to the actual compliance and enforcement. One proposal is for industry to refer any compliance breaches to the ACMA for enforcement action.

The IPND Manager has commenced a program of work to give the IPND a new secure web interface for data users and data providers in response to industry demands and an IP connection capability by 2018. The IPND Manager is also in the process of implementing a number of DoCA's IPND Review Recommendations Implementation Options, including the publication on the IPND Manager's web site of the IPND Manager's standard form of agreement and schedule of charges.

CA believes that CSPs should be able to access PNCD for the purposes of providing Location Dependent Carriage Services (LDCS) so that all Australians (with listed or unlisted PNCD) can have access to the 1800 and 13XX numbers operated by critical social services such as the SES, Police (for non-life-threatening situations), Lifeline and Beyond Blue. Currently customers who have chosen to have their number unlisted may not be able to access these services in a similar manner to customers who have listed services in the IPND.

Do Not Call Register (DNCR) and industry standards

The Do Not Call Register (the Register) is a secure database where individuals and organisations can register, check or remove their Australian telephone, mobile and fax numbers to opt out of receiving most unsolicited telemarketing calls and faxes.

The register is intended to be used by members of the general public to register Australian numbers used for private or domestic purposes, authorized officers of government bodies and emergency services, or authorized officers of businesses who can register Australian numbers used exclusively for transmitting and receiving faxes.

7. What are the community and key stakeholder expectations concerning the current DNCR, telemarketing and fax marketing functions? To what extent have these changed due to technological advances or other developments that have occurred since the DNCR scheme was introduced?

Numerous changes to the Register have led to an increase in the registration period for numbers stored in the Register from three years to now being indefinite. The result of the increase to an indefinite registration period has created some unintended consequences for firms engaged in telemarketing activities, in particular:

- the registration of a number on the Register may not be an accurate reflection of the needs of the current Rights Of Use Holder (ROU Holder) of that number;
- as more numbers are loaded into the Register, and without a current cleansing mechanism in place to remove records for disconnected services, the Register will become increasingly inaccurate;
- the increased inaccuracy of the Register may result in a reduction of the pool of available numbers for legitimate telemarketing activities thereby creating economic impacts to the telemarketing industry, and to those employed in this important sector; and
- some ROU Holders who welcome telemarketing opportunities will inadvertently be cut off from this service if they are allocated a number which was previously registered by a former ROU Holder

CA believes the Register should balance the needs of the ROU Holder who does not want to be called on their registered number and firms who are legitimately telemarketing products and services.

The registration process must be easy for consumers to both register and de-register but must also allow for the number to be automatically removed from the Register once it has been disconnected and served its quarantine period.

8. What are the potential benefits and costs associated with industry assuming responsibilities relating to the DNCR, telemarketing or fax marketing functions?

The Register is ever more likely to be out of synchronisation with the wishes of the current ROU Holder of a number, for reasons including, but not limited to, the:

- re-issuing of a disconnected number, after its mandatory quarantine period to a new ROU Holder who is unaware that the number they have been re-issued was placed on the Register by a previous ROU Holder of that number;
- telephone or fax numbers previously placed on the Register by a Residential

customer, now being used by a non-Residential customer;

- ROU Holder changing their email address and not remembering which email address had been used for registration; or
- registration being made by a person not authorised to place the number on the Register. At present numbers may be registered by a person who has no relationship to that number and there is no check to remove the number from the Register when the current ROU Holder relinquishes it, e.g. the ROU Holder moves to a new house and no longer retains the same number, disconnects the service, etc.

Currently data washing costs are borne by telemarketers. Due to the issues discussed above, the wash lists received back by telemarketers are of increasingly less value.

The Register and the IPND will need changes that will increase ongoing operational and administration costs for the benefit of a more accurate Register.

Industry believes that the costs to improve the current state of the Register should be borne by the telemarketing industry as a whole, not by the telecommunications sector. Therefore, any solution should consider how these costs can be reasonably apportioned across those who stand to benefit from improvements to the Register accuracy.

The increased costs should therefore be covered by a cost-based increase in the wash list fee which would be used to pay for access to the Register cleansing data from the IPND.

CA members believe that introduction of a cleansing mechanism and over time the resultant higher quality of data should have a positive overall cost benefit.

Below are the potential cost implications associated with the proposed solutions.

1) Clean up via IPND data

This method is likely to lead to additional costs being associated with making changes to IPND data flows to capture and pass on the required data, also costs associated with putting in place IPND to DNCR data links.

The administrative overhead to IPND and the Register would likely need ongoing activity to monitor that the solution delivered to expectations.

2) CSP-based solution

This method would add operational costs to CSPs, or associated carrier activities.

For some suppliers this may require little change to resourcing to manage the process, whilst for others there may be an impact with the implementation if the internal processes are more manual. This will require further investigation.

The cost is unlikely to be as high as solution 1 as changes to IPND data flows would not be required.

It remains unclear at present whether the operational and administrative costs involved with either solution could be recovered from the Register. If so, the smaller incremental cost associated with these could be offset in a review of the Register washing fees.

To reduce technology and process costs required by the suggested approach in solution 1 of using the IPND, any such change should be co-ordinated with proposed changes to the IPND, including cost recovery, thereby allowing the two matters to be considered in conjunction.

9. Would any potential benefit to industry arising from industry management of the DNCR, telemarketing or fax marketing functions align with the public interest?

As CA and its members have advised previously, the accuracy of the current Register must be improved to ensure there is a practical and cost-effective cleansing mechanism to solve the problem of validating registrations and keeping them in alignment with the wishes of the current user of that telephone or fax number, and to curtail the social and economic ramifications of the unintended consequences of the current registration arrangements.

10. Is there an appropriate body (or bodies) to assume responsibilities relating to the DNCR, telemarketing or fax marketing functions? Is there agreement about what that body is and its capacity to take on those responsibilities?

See the answer provided above in the IPND function.

11. What would be the potential model/s for industry management of the DNCR, telemarketing or fax marketing functions? Are there actual or perceived impediments to this approach? What are the stakeholder views in relation to the potential options outlined in this part?

CA has discussed a number of potential solutions to ensure ongoing accuracy of the Register, some of which involved the use of IPND data to clean up the Register, whilst other solutions suggested absorbing the Register capability into the IPND.

1) Clean up via IPND data

In this approach IPND data would be used to clean up the Register via a removal process. Where a service has been 'Disconnected' and there is no new IPND 'Connect' record within six months of the 'Disconnect' record, the number will be identified by the IPND Manager and a 'remove' record sent to the Register.

2) CSP based solution

CSPs would themselves, or through a supporting carrier, via a semi-manual or automated process, identify those numbers that have been removed from quarantine and put those numbers back into the available number pool.

Both of the solutions noted above would require a customer education and information program to be implemented to advise consumers that numbers will be removed from the Register after being disconnected for six months.

12. Are there any other issues relevant to the consideration of whether industry could take on responsibilities relating to the DNCR, telemarketing or fax marketing functions?

Depending upon the bill that allowed for an industry managed scheme, there may be need for further changes to legislation as technology and new options become available. There may be potential changes to the current cost models associated with the IPND and the Register and the associated instruments, such as the ACMA IPND scheme and the Industry IPND Code. For example; the two suggested approaches discussed above may give rise to the following potential issues:

1) Clean up via IPND data

The automated cleansing activity using the IPND data would need regulatory change that would add delay. There would need to be consideration of the transactions that cause IPND data to be updated and to filter account changes and number porting activity from a service disconnection. This may be complex to put into place, however the six-month quarantine period together with a consumer education campaign should overcome most difficulties.

2) CSP-based solution

Given the scope and size of the market and the varying mix of CSPs' involvement in the allocation of number ranges, some may find the task of providing data to be removed from the Register challenging. This is where the supporting carrier may be able to assist. If costs are to be borne by the CSP this may be a more significant factor.

Commercial electronic messages and spam

It is CA's strong view that the ACMA's responsibilities under the Spam Act (the Act) should not be transferred to industry for self-regulation. The Act potentially regulates whole of economy business activity and not just the telecommunications industry. The sending of commercial electronic messages is viewed as an effective means of communicating with customers across many businesses.

Compliance with the Act and implementation of processes and procedures around it is an issue that has broader reach than the telecommunications industry. It would be more appropriate for a body with broader interaction with a broader number of stakeholders to oversee compliance with the Act.

In our view the ACMA is in a unique position to be able to monitor compliance given its past involvement and independence from business activity.

Instead, we would rather see sensible amendments made to the Act to bring it in line with today's business activities and consumer expectations. Since the Act came into effect, enforcement activity and technological advancements such as Spam filters have lessened the impact of some of the earlier, and more crude forms of electronic communication. As a result, we feel that there is no longer need for the same level of consumer protections.

Increasingly consumers have begun to understand the utility of electronic communications and interact with them in a way that more closely meets their expectations. For example, customers have the ability to opt out of all electronic communications by just clicking on a button, but more importantly to nominate which form of communication they would prefer to receive, such as opting to receive emails over a telephone call.

CA believes that the Act should be modernised to meet community expectations and standards. Ongoing consumer complaints and ACMA enforcement activity demonstrate that there is still a need for regulation of sending commercial electronic messages.

However, our view is that the current definition of 'commercial electronic message' under the Act is overly restrictive and unnecessarily burdensome. The threshold for what is considered commercial is very low, given it captures any message that includes an offer, supply, advertisement or promotion of goods or services, or the promotion of a supplier of goods and services.

13. What are community and key stakeholder expectations concerning the current commercial electronic messages and spam functions? To what extent have these changed due to technological advances or other developments that have occurred since the regulatory scheme was introduced?

Advances in technology have increased the utility of commercial electronic messages as it can be used to connect with customers in a way that is convenient, tailored to customer preferences and consistent with the way that customers intend to use them. There continues to be a community and stakeholder expectation that consumers should have the ability to exert control over the types of communications they do/ do not want to receive. However, we believe that the current definition of a designated commercial electronic message is defined so narrowly that consumers are unable to receive certain communications that they want because the legislation lacks a nuanced approach to modern communications technologies.

14. What are the potential benefits and costs associated with industry taking on responsibilities in relation to the commercial electronic messages and spam functions?

We believe that responsibility for regulating spam is best left to the ACMA as business economy wide may send commercial electronic messages and therefore moving regulation to the telecommunications industry may lead to conflict of interests.

15. Would any potential benefit to industry arising from industry management of the commercial electronic messages and spam functions align with the public interest?

We do not think there are benefits for industry management with the Act and in fact, doing so may increase the potential for conflict of interest with commercial activity.

16. Is there an appropriate body (or bodies) to take on responsibilities in relation to the commercial electronic messages and spam functions? Is there agreement about what that body is and its capacity to take on those responsibilities?

The ACMA is best placed to take on the responsibilities of the Act due to established systems for enforcement and reduced potential for conflict of interest.

17. What would be the potential model/s for industry management of the commercial electronic messages and spam functions? Are there actual or perceived impediments to the approach?

We do not believe that industry management of the spam functions would be suitable and therefore have not considered any potential models.

18. Are there any other issues relevant to the consideration of whether industry could take on responsibilities in relation to the commercial electronic messages and spam functions?

As above



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