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Chair and Agency Head

Mr Stephen Palethorpe
Committee Secretary
Senate Standing Committees on Environment and Communications
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Dear Mr Palethorpe

ACMA submission–Inquiry into the Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019

The Australian Communications and Media Authority (ACMA) welcomes the invitation to provide a submission on the draft Telecommunications Legislation Amendment (Unsolicited Communications) Bill 2019 (the Bill).

The ACMA has experience and data relevant to regulatory reform in this area as the independent Commonwealth statutory authority responsible for the regulatory safeguards under the *Spam Act 2003* (Spam Act), the *Do Not Call Register Act 2006* (DNCR Act) and associated Industry Standards in force under the *Telecommunications Act 1997* (Telco Act).

Potential for a revised regulatory framework

While the ACMA does not have specific comment about the amendments proposed in the Bill, we would like to draw the Standing Committee's attention to ACMA findings released in late 2018 about drivers and opportunities for reform of the unsolicited communications regulatory frameworks.¹

High-level drivers include new and emerging:

- > communications technologies, evolving market practices and convergence on the communications network layers of content, application and transport
- > consumer behaviour and expectations
- > pressures related to the current policy and legislative framework.

The ACMA's findings were directly informed by consumer research that indicated Australian adults want more control over when and how they give consent in relation to communications.²

These drivers point to consideration of a new unified unsolicited communications regulatory scheme to provide a technology-agnostic and consistent set of consumer safeguards across all telecommunications platforms.

¹ ACMA, [Report on industry self-regulation of commercial electronic messages, the Do Not Call Register and the Integrated Public Number Database](#), 2018

² ACMA, [Unsolicited call in Australia – Consumer research](#), 2018

Under such a scheme, existing rules in the DNCR Act, Spam Act and related powers and functions in the Telco Act could be consolidated and harmonised to align with the consent obligations in the *Privacy Act 1998* (Privacy Act).

A new scheme would, ideally, consist of a universal consent-based framework under which contact could only occur where either consumer consent has first been obtained, or where a public interest exemption is applicable.

In such a new scheme, exemptions could remain, however with an additional safeguard via an obligation on *all* entities to provide an 'unsubscribe' functionality—regardless of the size of the entity, marketing channel used or whether the entity is otherwise exempt. We note that this finding aligns with some of the proposed amendments in the Bill.

This revised framework would be broadly consistent with the current Spam Act and would remove the need for a Do Not Call Register (given that consumers would, by default, generally be opted out of receiving unsolicited communications).

It would also be consistent with international approaches, such as the European Union's General Data Protection Regulation which is underpinned by strong consent protections across all relevant marketing channels.³

Scam calls and messages

The ACMA notes that one of the key issues challenging the current regulatory framework for unsolicited communications is scam activity, particularly when it is perpetrated from offshore. Scam activity not only impacts on individuals, but it undermines confidence in telecommunications services and legitimate marketing practices.

The ACMA's 2018 consumer research found:

- > more than half of Australian adults have received scam calls daily or weekly
- > three quarters of Australian adults believe not enough is done to protect individuals from scam calls.

Scams remain the single largest source of consumer complaint to the ACMA across its broad remit, and there is strong evidence that the financial and other harms from scam activity is growing. The Australian Competition and Consumer Commission (ACCC) reports record losses to scams of over \$500 million in 2019.⁴ In 2018, 46.8 per cent of scam reports concerned phone calls.⁵

Scam activity means, in effect, that Australians with numbers on the Do Not Call Register are still likely to receive unsolicited calls, and it can be challenging for consumers to recognise the difference between a scam or telemarketing call, particularly when a call is not answered.

To help address these issues, the ACMA has recently released its Combatting Scams Action Plan⁶ that recommends:

- > the establishment of an action taskforce;
- > new enforceable obligations on telecommunication providers; and,
- > the immediate commencement of trials of scam reduction initiatives.

³ European Commission, [EU data protection rules](#), 2019

⁴ Scamwatch, [Record losses expected as scammers target Australians](#), 2019

⁵ ACCC, [Targeting Scams Report of the ACCC on scams activity 2018](#), 2018

⁶ ACMA, [Combating scams: Action plan summary](#), 2019

Implementing the Action Plan recommendations is an ACMA priority in 2020, noting that scam reduction trials have already commenced.

Updated complaint statistics

The ACMA notes that the explanatory material to the Bill quotes complaint statistics about charity calls to the ACMA from 2015-16 and 2016-17. Consumer complaints regarding charity calls in 2017-18 were 1.2 per cent of all complaints received in 2017-18 and 0.8 per cent in 2018-19.

Further information about complaints and ACMA compliance and enforcement actions can be found in the ACMA's Annual Report for 2018-19⁷, and in the ACMA's quarterly publication about actions taken on unsolicited communications: <https://www.acma.gov.au/action-spam-and-telemarketing>

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Yours sincerely

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⁷ ACMA, [ACMA and eSafety Commissioner Annual Reports 2018-19](#), 2019

