

FUNDRAISING INSTITUTE AUSTRALIA

AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY
Proposal to remake the Telemarketing and Research Industry Standard 2007

SUBMISSION COVER SHEET

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ABOUT FIA

FIA advances the interests of fundraising in Australia. With over 1700 members, we are the largest representative body for the fundraising sector. FIA advocates for the interests of the sector, administers a self-regulatory Code of Ethics, educates fundraising professionals and creates forums for the exchange of knowledge and research.

THIS SUBMISSION

As part of its system of self-regulation for the fundraising sector, FIA maintains its own Standard of Charitable Telemarketing Fundraising Practice. This Standard is currently under review as part of a wider Review of Sector Sustainability.

The FIA Standard seeks to provide members with a 'one-stop shop' for the various statutory and self-regulatory requirements they are expected to uphold in the interests of regulatory compliance and best practice telephone fundraising. In some areas the requirements of the FIA Standard¹ go beyond those of the ACMA Telemarketing and Research Industry Standard 2007, however to the extent that the two standards overlap, it is considered important for the FIA Standard to align perfectly with the ACMA.

In addressing the proposed changes to the legislative framework, FIA seeks to demonstrate how self-regulation continues to play a key role in supporting the dual objectives of providing consumers greater certainty over unsolicited telemarketing while reducing compliance costs to charities.

FIA agrees with the ACMA proposal that, in remaking the Telemarketing and Research Industry Standard 2007, "no substantive changes to the standard"

¹ Sections 2 & 3 of FIA's Standard address workplace and training issues and Section 4 goes some way beyond the ACMA "provision of information" requirements by requiring members to "include in the script words to the effect: 'if you wish, you may opt out of receiving any further calls from the Organisation' and including instructions on opting out." FIA also goes somewhat further in Sections 9 and 10 of its Standard with regard to the practices of leaving answerphone messages and the use and practice of dialling equipment. Section 11 deals with outsourcing arrangements including written agreements with suppliers, while Section 12 deals with 'follow-up procedures' in respect of donations.

be made.” However, FIA submits that some of the proposed changes *do* in fact represent significant changes and the likely impacts of these need to be carefully considered.

3.1 Express consent to call during prohibited calling times

FIA can confirm that established industry practice is to gain express consent before calling outside the hours specified in the standard. Moreover, reliance on ‘inferred’ consent has been on the decline across many other communications channels as well, especially since the advent of the Australian Privacy Principles.

Nevertheless, the proposed removal of the ability to rely upon inferred consent *does* amount to a significant tightening of the regulatory framework and increases the compliance burden for charities who would be required to keep more detailed records of donor preference in relation to calls, as the onus will fall upon the charity to, if asked, prove they have a record of express consent, in the event of a complaint. It also exposes charities to increased risk of sanctions and financial penalties in the event of breach. This will add to the red tape burden on the sector.

Taking away the option of relying on inferred consent could also make it more difficult, in a practical sense, to follow up in circumstances where the donor may be a vulnerable person. A scenario in which it may be necessary and appropriate to rely on inferred consent is as follows:

A fundraiser calls an elderly person during normal calling hours and the person readily agrees to make a large donation to the charity. During the call, the person reveals that they live with their adult son who comes home from work after 8pm. Upon reflection, the caller believes the donor may be a ‘vulnerable’ person. They decide to call back after 8pm, relying on inferred consent, to validate the donation with the donor’s son.

The proposed change also risks creating a misalignment between current privacy law and the Standard. Under the APPs, businesses can continue to rely upon inferred consent to communicate with customers in many circumstances, as long as that appropriate provision for opt out has been made.

FIA submits that, given there is no evidence of systemic failure under the current requirements, and given the current trend towards little or no reliance on inferred consent across the sector, there is no need to change the existing standard by removing the ability to rely upon inferred consent and that to do so would add to the compliance burden on the sector.

3.2 Call attempts

FIA supports the proposal to clarify that if the call attempt does not result in there being an opportunity for certain information to be provided, there should be no requirement for the information to be provided by the caller. FIA submits

that this 'housekeeping' change to the Standard will remove ambiguity around this matter.

3.3 Information provided about the call and the entities involved in the call

FIA supports the removal of the term "telemarketing" from 6(1) and 6A(1) of the current standard.

FIA agrees with the ACMA that "some provisions provide little or no consumer protection or compliance benefit while creating a regulatory burden for industry". However, FIA's own analysis of fundraising sector practice does not support the ACMA's finding that "a significant number of consumers are uncertain about why they have received a call and who is the caller". FIA would welcome more information about the evidence basis for the ACMA's finding, including the number of complaints or enquiries in which consumers expressed confusion or uncertainty about the identity of the caller, in circumstances where the call was being made on behalf of a charity.

Fundraising sector practice is to be very up-front and open about the identity of the caller (including the company name if they are a third party supplier), on whose behalf they are calling, and the nature of the call. Experience shows conclusively that there is nothing to be gained and much to be lost (including reputational damage) by failing to be transparent with donors on these matters. The FIA Code places a very strong emphasis on transparency, and compliance with its requirements in this area is extremely high.

Sector practice under self-regulation already provides the "early and accurate information" this additional provision seeks to impose. While FIA does not see the need to formalise this additional disclosure requirement in the Standard, we do not oppose the measure.

FIA supports the removal of the requirement to identify the individual making the call in the current subsection 6(3)(b) and 6A(5)(b) however we note that this does not reduce in any substantive way the information that a caller on behalf of a charity is required to provide.

FIA supports the removal of the term "if applicable" for reasons of clarity and rationalization, however we note that it remains in the new draft Standard at 9(4)(c)(ii) therefore its purpose (i.e. the circumstances of applicability) still needs to be explained.

In general, fundraisers do not use "automated or robocalls" to contact current or prospective donors. Therefore the proposed change: "unless the call is made solely using a recorded or synthetic voice" would have no significant direct impact on the sector. FIA considers such calling techniques (we believe used mainly by polling firms and market researchers) to be a significant contributing factor to consumer annoyance with unsolicited telemarketing. Therefore, FIA would be concerned if the effect of the proposed change was

to encourage an increase in the number of such “synthesized voice (e.g. automated or robocalls)” to consumers, especially people on the DNC register. The indirect impact on charities could be to provoke a consumer backlash against all forms of telemarketing. This could also be expected to increase pressure from organized interests whose aim is to remove the DNC exemption for certain public interest causes. For this reason, FIA is opposed to the addition of new clauses 9(2)(a) and 10(2)(a).

FIA welcomes, in principle, the proposal to remove the current requirement 6(4) relating to information that must be provided within seven days. We agree that the provision of this information does not confer on consumers any meaningful benefit, however it does add to the compliance burden on charities.

We agree that under the APPs consumers have sufficient recourse to track the source of their personal information used in fundraising appeals. We caution, however, against the risk of regulatory creep implicit in publishing separate “consumer information that addresses this matter”, as suggested in the Consultation Paper. FIA respectfully requests to be consulted during the development of any such consumer information and to be given an opportunity to comment on it.

FIA also agrees with the ACMA that requiring callers to provide the name of the person the call was intended for does not benefit consumers, and we welcome the removal of this clause.

3.4 Information provided about the entity that caused the call to be made for research calls

FIA has no comment.

3.5 Contact details

FIA supports the proposals concerning changes to contact details.

3.6 Terminating a call

While FIA is supportive in principle of introducing examples indicating a person no longer wants to continue with a call, we believe the Industry Standard is not the right place for them. The use of examples runs the risk of ‘limiting’ the scope of the Standard in ways that may not have been intended, rather than illustrating its application. This introduces an element of uncertainty, not clarity.

Most fundraising organisations include such material as part of their training of staff. It is also available through FIA and can easily be incorporated into the revised FIA guidance for telephone fundraising, which is currently under

development and available to all fundraisers, both FIA members and non members. FIA submits that it is better left to the sector to advance examples of best practice and for the regulatory authority to reserve the right to judge the efficacy of such measures.

3.7 Calling-line identification

The proposed changes to calling-line identification remove the flexibility that was designed into the original standard while creating significant technical issues for charities in the provision of all details required. The current standard requires callers to make “reasonable efforts” to facilitate return telephone contact. This has been replaced by the much more arbitrary wording “must ensure...”

It is not always possible for charities to have resources available to answer return calls in person, so being able to have a recorded message that makes clear who has called, the reason for the call, and directing the individual to the charity’s website enables effective response by the charity and, if required, prompt removal from any future calling. However, it would be extremely complex for an answer machine to respond to a call recipient with the same information as the initial outbound call. Even a live operator would need to review this information and search to provide the items described in paragraph 9(2)(b),(c),(d) and (e).

FIA respectfully requests the following change to the proposed 14(2)

Amend subsection: (ACMA)

‘Callers must **make reasonable efforts to** ensure that when calls are made, the number that is transmitted to the calling number display of the receiver terminals is a telephone number which, **if called by** the call recipient, **enables the call recipient to obtain:**

- (a) **for calls that are not research calls—the information described in paragraphs 9(2)(b), (c), (d) and (e); or if in the case of a recorded message a statement confirming 9(2)(d) and (e)**
- (b) **for research calls—the information described in paragraphs 10(2)(b), (c) and (d).**

3.8 Other changes

FIA has no comment.