



Do Not Call Register

A guide for your business



An Australian Government Initiative



**Do Not Call
Register**

Make the right call

The Australian Government's Do Not Call Register has officially commenced

Under the *Do Not Call Register Act 2006*, the Australian Communications and Media Authority (ACMA) is responsible for establishing and overseeing the Do Not Call Register, establishing a national industry standard setting minimum levels of conduct for telemarketing and research calls and investigating breaches of the Do Not Call Register legislation.

On 31 May 2007, it became illegal for any non-exempt telemarketer to make an unsolicited telemarketing call to any number listed on the Do Not Call Register.

This booklet outlines steps which businesses need to take to comply with the Do Not Call Register legislation and avoid breaches and penalties.

This booklet contains information about:

- ▶ the Do Not Call Register legislation
- ▶ the Telemarketer Access Portal—the industry website
- ▶ how businesses can check calling lists against telephone numbers on the register
- ▶ annual subscription fees for access to the register
- ▶ the national industry standard for telemarketing and research calls
- ▶ breaches, complaints procedures and penalties and
- ▶ where to go for more information.

Do Not Call Register—overview

The Do Not Call Register was developed in response to community concern about the growth in unsolicited telemarketing calls. The register enables individuals to list their fixed line and mobile telephone numbers, used primarily for private or domestic purposes (except numbers used exclusively for faxes), to opt-out of receiving certain telemarketing calls.

To avoid penalties for calling listed telephone numbers, telemarketers can check, or 'wash', their calling lists against the numbers listed on the Do Not Call Register.

Under the Do Not Call Register Act a telemarketing call is broadly defined as a voice call made to a telephone number to offer, supply, provide, advertise:

- ▶ goods or services
- ▶ land or an interest in land or
- ▶ a business opportunity or investment opportunity or
- ▶ solicit donations.

A telemarketing call has two key elements:

- ▶ it must be a voice call and
- ▶ it must have a particular commercial-type purpose (although some commercial calls are excluded from the definition of telemarketing call).

Further information about telemarketing calls is available on the Do Not Call Register website.

Certain public interest organisations are still allowed to make specific types of telemarketing calls to numbers that are listed on the register. Exemptions apply to:

- ▶ charities
- ▶ religious organisations
- ▶ educational institutions
- ▶ government bodies
- ▶ registered political parties
- ▶ political candidates
- ▶ independent members of parliament.

Calls conducted for the purpose of research which have no commercial-type purpose are permitted to numbers on the register. However, calls to conduct opinion polling and

standard questionnaire-based research are subject to the industry standard for telemarketing and research calls. More information about the standard is on page 11 of this brochure.

Telemarketing calls may still be made to individuals who have expressly consented to receiving calls or where consent can be reasonably inferred from their conduct and business or other relationships.

Express consent may occur where an individual, or their nominee, has specifically agreed to receive a telemarketing call from the business calling. Importantly, where express consent has not been given for a set period or expressed to go on indefinitely, consent is taken to expire three months after it was given.

In the absence of express consent to receiving telemarketing calls, consent may still be able to be reasonably *inferred* from both an individual's conduct and their business or other relationships. For example, it is possible that a person who holds a 'XYZ Bank' credit card may reasonably expect to receive calls about 'XYZ Bank' home loans or 'XYZ Bank' savings products.

However, it is less likely to be reasonable for a person with a 'XYZ Bank' credit card to be cold called by 'Lucky's Financial Services', regardless of the subsidiary relationship these entities might share.

Where a person indicates they do not wish to receive telemarketing calls from the organisation, consent ends immediately and can no longer be inferred.

More detailed information about consent is available on the Do Not Call Register website.

There is a range of penalties for breaches of the Act. These include infringement notices, injunctions and court proceedings.

Penalties range from \$220 to \$110,000 for an infringement notice, and up to \$1.1 million for multiple breaches by a corporate body if imposed by a court.

Breaches of the standard may lead to a formal warning, injunctions, or financial penalties. Penalties are up to \$250,000 for each contravention for bodies corporate and up to \$50,000 for individuals.

How the register operates

Anyone planning to make telemarketing calls should submit their calling lists to the Do Not Call Register operator, Service Stream Solutions Pty. Ltd, for washing. Once the list is washed, it is returned, with numbers identified as ones that are or are not listed on the register.

Under the Do Not Call Register Act, a person who submitted a list for washing can rely on the information about whether a number is on the register for 30 days.

The register operator can check lists ranging from one telephone number to millions of telephone numbers. Depending on the load on the washing service at the time, turnaround is generally less than a minute.

To have lists checked, users can either:

- ▶ upload via the Telemarketer Access Portal (TAP), the industry website or
- ▶ send to the register operator on CD-ROM.

Both of these options are secure.

What to do before calling

Before calling lists can be submitted for washing against the Do Not Call Register, the user must:

- ▶ set up an account with the register operator
- ▶ agree to the terms of use
- ▶ select a subscription type/s and
- ▶ agree to payment of the applicable annual subscription fees.

Account types

Two account types are available.

Administration accounts

Administration accounts allow washing and provide payment information. As a minimum, all users must open an administration account before using the washing service. This account is expected to meet the needs of most users.

Washing only accounts

Washing accounts are used for washing only. These accounts are expected to suit large organisations where a number of departments make telemarketing calls. This account enables a number of different users to wash lists, but still be linked to the one administration account for the organisation.

The register operator will provide important information via email, so it is important to provide correct contact information, including up-to-date email addresses.

The account-opening process is available either online, or by telephone for businesses wanting to submit CD-ROMs for washing.

Access fees

To access washing services, users are generally required to pay an annual subscription fee. The subscription is chosen according to the user's washing needs.

There are eight annual subscription types to choose from. These range from subscription type A which is free, through to subscription type H.

The table below outlines the different subscription types.

Subscription type	Maximum number of telephone numbers able to be submitted for checking during subscription period	Annual subscription fee	Excess usage charge for each number submitted in excess of the maximum
A	500	\$0	\$0.004
B	20,000	\$71	\$0.004
C	100,000	\$320	\$0.004
D	1,000,000	\$2,800	\$0.004
E	10,000,000	\$24,000	\$0.004
F	20,000,000	\$40,000	\$0.004
G	50,000,000	\$60,000	\$0.004
H	100,000,000	\$80,000	\$0.004

There are certain limitations to subscription type A. In general, only one subscription type A can be taken out in any 12-month period. If a user wants to take out any other subscription type/s they will have to cancel the type A subscription. Users have the flexibility to purchase multiple subscriptions during the term of a subscription.

During the term of a subscription, the register operator will keep track of the total number of telephone numbers that a user has submitted for washing. This total will include telephone numbers that are marked as invalid numbers, as well as any number that has been submitted for checking more than once.

If the user exceeds the maximum number of telephone numbers permitted to be washed in the subscription type during the 12-month period, an excess usage charge will apply.

Subscriptions will not be renewed automatically after the 12-month period lapses.

Washing calling lists

Properly formatting lists before submitting them will assist in maintaining washing turnaround times and help reduce the likelihood of invalid numbers being submitted.

In general, for a contact list to be washed by the register operator, it must:

- ▶ be in comma separated variable (CSV) format
- ▶ contain 10-digit telephone numbers only including the area code, but not country codes
- ▶ commence with a 0 (zero)
- ▶ include no other data fields, for example, name and address as these will be treated as an invalid number
- ▶ not contain customer ID numbers as these will be treated as an invalid number
- ▶ contain only a single column of telephone numbers
- ▶ terminate each record or row with a carriage return (ASCII 13) and line feed (ASCII 10)
- ▶ be no larger than 10MB, compressed and
- ▶ the name of the file uploaded for list washing can only contain characters from A~Z, 0~9 and underscores (" _ "), for example ABC123.csv or ABC_123.csv is acceptable, but ABC-123.csv is not. The file extensions must adhere to the following rules:

- If the file is not zipped, the file extension must be one of the following “.csv”, “.txt”, “.dat”
- If the file is zipped, the file extension must reflect the zip format, such as “.zip” for WinZip, “.gz” for GZip, etc.

Brackets, hyphens, dashes and spaces can be included in the telephone number format. Commas (,) are not allowed because they are used as delimiters by the database processing code. Commas (,) will be replaced by the text string “{COMMA}” before being marked invalid.

The following table provides some examples of acceptable and unacceptable telephone number formats.

Acceptable	Unacceptable
02 5550 5555	+61 2 5550 5555
02-7010 5555	7010 5555
(04) 91 570 156	1800 160 401
(05) 5550 5556 (VoIP numbers)	0A 5550 5555

Any telephone numbers that do not satisfy the criteria may be considered invalid. Invalid numbers will need to be corrected and re-submitted for washing but will be counted as submitted numbers.

Zipped or compressed file formats are encouraged.

Once lists are correctly formatted, the user can submit them by either uploading to the website, using the Quick Check option, also on the website, or by CD-ROM sent by certified mail to the register operator. The Quick Check option allows users to check up to 10 telephone numbers at a time.

Washed list return

Once a calling list is submitted for washing, the register operator will wash the list against the telephone numbers on the Do Not Call Register.

Washing will generally take less than a minute depending on the size of the calling list, the load on the register operator’s system at that time, and the preferred format for the washed list.

Larger lists, or those requiring the flagged option as a returned file format (refer to (e) below) will take slightly longer to wash.

Depending on the preferred format of the washed list, the user will receive a washed list that includes:

- a) the numbers in the submitted contact list that are on the register or
- b) the numbers in the submitted contact list that are not on the register and
- c) the numbers in the submitted contact list that are invalid (automatically provided) or
- d) all of the above or
- e) the submitted contact list, washed, with indicators.

With option e, the following indicators will be included in the file:

- Y = Yes, this number is on the register or
- N = No, this number is not on the register or
- I = Invalid, this number is invalid.

Any invalid numbers will be counted as a submitted number and will need to be corrected and re-submitted for washing.

Washing receipt

At the completion of the washing process, the user will be provided with a list-washing receipt. This receipt is provided via the website or posted back with CD-ROM submissions. The receipt will include important information such as:

- ▶ a unique list-washing transaction ID
- ▶ if an excess usage charge applies, the total dollar amount for this transaction, or the balance in terms of the number of telephone number washes remaining for the subscription
- ▶ the date when the subscription expires
- ▶ a transaction summary for the submitted list including the:
 - total quantity of telephone numbers in the submitted contact list that were on the register
 - total quantity of telephone numbers in the submitted contact list that were not on the register
 - total quantity of purported numbers (by type) in the submitted contact list that have not been treated as telephone numbers ('invalid numbers')
 - total quantity of telephone numbers that were submitted for washing
- ▶ time and date stamp for when the register operator received the submitted contact list
- ▶ time and date stamp for when the user was informed about the numbers that were, or were not, on the Do Not Call Register
- ▶ account details
- ▶ a link to download the washed file/s
- ▶ the following reminder: 'Before using your washed list you should familiarise yourself with the provisions of subsection11(3) of the *Do Not Call Register Act 2006*. In general, under subsection11(3), the person who submitted a list for washing can rely on the information she or he receives in response to that request for a maximum of 30 days only.'

More detailed information about the washing process is on the Do Not Call Register website. Technical assistance is available from the register operator on 1300 785 749.

Industry standard for telemarketing and research calls

In addition to establishing the register, ACMA has made a national industry standard for telemarketing and research calls. The industry standard provides a minimum set of requirements for telemarketing and research calls and is intended to provide consumers with greater certainty on the minimum level of conduct they can expect from those making unsolicited calls.

After 31 May 2007, any individual or organisation that makes, or arranges for telemarketing or research calls to be made, including those exempt from the prohibition on calling telephone numbers on the register (such as charities), needs to abide by the industry standard. The industry standard applies to all voice calls made to Australian numbers that:

- ▶ offer, advertise or promote goods, services, land, interests in land, business opportunities or investment opportunities
- ▶ advertise or promote suppliers or prospective suppliers of such things
- ▶ solicit donations, or
- ▶ conduct opinion polling or standard questionnaire-based research.

It establishes minimum requirements for those making telemarketing and research calls in four main areas:

Restricting the calling hours/days for making telemarketing and research calls

Under the industry standard, a caller must not make or attempt to make a call on:

	Research calls	Telemarketing calls
Weekdays	Before 9.00 am or after 8.30 pm	Before 9.00 am or after 8.00 pm
Saturdays	Before 9.00 am or after 5.00 pm	Before 9.00 am or after 5.00 pm
Sundays	Before 9.00 am or after 5.00 pm	Calls prohibited
National public holidays	Calls prohibited	Calls prohibited

There is an exception to these rules where consent has been given by the call recipient in advance to receive the call during the prohibited calling hours.

Where more stringent calling hour restrictions apply under a state or territory law, the more stringent law will continue to apply. ACMA understands that currently state and territory laws regulate contacts directed towards sales and do not directly regulate calling hours for research calls.

Requiring provision of specific information by the caller

Under the standard, a person making a telemarketing call must, at the start of the call, provide their contact information and the name of the person or business that caused the call to be made, and explain the purpose of the call. A person making a research call must provide this information during the call.

Under the standard, callers must also provide on request the source of the telephone number. Further, the standard requires additional information to be provided where the call recipient requests the information, including the name and contact details of any person responsible for dealing with consumer enquiries or complaints.

Providing for the termination of calls

The standard requires the caller to terminate the call in a number of circumstances, including where the call recipient asks for the call to be terminated or otherwise indicates that he or she does not want the call to continue.

Requiring callers to enable calling line identification

The caller is also required to ensure that calling line identification is enabled at the time that the caller makes or attempts to make a call.

Penalties apply for breaches of the industry standard. These are outlined on page 4.

A copy of the industry standard is available on the ACMA website at www.acma.gov.au/donotcall.

Complaints and penalties

All complaints about the administration and operation of the Do Not Call Register must be lodged with the Do Not Call Register operator. If the register operator is unable to respond to an enquiry or resolve a complaint, it may be referred to ACMA.

Complaints about alleged breaches of the *Do Not Call Register Act 2006*, the regulations made under the Act, the industry standard or any code made may be lodged with the register operator and will be referred by the Do Not Call Register operator to ACMA for investigation.

ACMA recognises that it will take time for industry to adapt to the legislation, and will take a strategic approach by providing assistance to industry to comply with the new rules. ACMA will review each case if there is evidence of persistent compliance problems.

If a regulatory breach occurs ACMA will, within the limits of the legislation, take regulatory action commensurate with the seriousness of the breach. ACMA's general approach to compliance is to negotiate and resolve the matter, without resorting to formal procedures. If informal resolution is unsuccessful or inappropriate, ACMA will take appropriate enforcement action.

Types of breaches may include:

- ▶ making unsolicited calls to numbers listed on the register
- ▶ failing to ensure contracted parties comply with the Do Not Call Register provisions or
- ▶ not complying with the industry standard.

There is a range of options available to ACMA for dealing with breaches of the Act, including issuing formal warnings or infringement notices, seeking injunctions, accepting enforceable undertakings or commencing court proceedings for pecuniary penalties to be imposed.

Infringement notices may be issued as an alternative to court proceedings. The amount payable under an infringement notice will depend on:

- ▶ whether the contravention was by a body corporate
- ▶ whether the contravention was by an individual
- ▶ the number and type of contravention/s of the Act.

Infringement notice penalties range from \$220 to \$110,000.

Penalties as a result of court action may be considerably higher, with a maximum penalty of \$1.1 million in certain cases.

Penalties under the Do Not Call Register Act are civil rather than criminal.

The civil penalty provisions also apply to persons who:

- ▶ aid, abet, counsel or procure a contravention of the Act
- ▶ induce a contravention of the Act
- ▶ are in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of the Act
- ▶ conspire with others to contravene the Act.

ACMA will also investigate any complaints about the register operator which have not been resolved satisfactorily with the operator.

If the list-washing system is not available at any time, users need to be aware that the Act still applies. Numbers on lists that have not been washed against the register and accepted for use cannot be called without the risk of contravening the legislation.

More information about complaints and penalties is available on the Do Not Call Register website.

Further information

Further information about the Do Not Call Register, the industry standard and the responsibilities of businesses can be found at:

- ▶ the Do Not Call Register website
www.donotcall.gov.au
- ▶ the ACMA website
www.acma.gov.au/donotcall
- ▶ the website for the Department of Communications, Information Technology and the Arts
www.dcita.gov.au

The Do Not Call Register can also be contacted using:

the industry assistance line 1300 785 749

email enquiries@donotcall.gov.au

post PO Box 42
North Melbourne
Vic 3051

Please note: This document is intended as a guide only and should not be relied on as legal advice or regarded as legal advice in individual cases.

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