

# Do Not Call Register—Approach to compliance (telemarketing)

## Information for the telemarketing industry

### Introduction

The Australian Communications and Media Authority (the ACMA) is responsible for overseeing compliance with the rules set out in both the *Do Not Call Register Act 2006* (the Act) and the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (the industry standard) (collectively referred to as the DNC legislation).

This information sheet sets out the ACMA's approach to compliance with the DNC legislation and what telemarketers can expect where the ACMA receives a complaint about a call they have made.

### Rules for telemarketing

Amongst other things, the Act sets out two key rules for telemarketers:

1. a telemarketer must not make a telemarketing call to a number on the Do Not Call Register (the register), unless consent has been obtained for the call
2. a telemarketer must ensure that all agreements for the purpose of making telemarketing calls include an express provision that requires compliance with the Act.

You should also be aware that responsibility for telemarketing calls made to numbers on the register rests with both the telemarketer and any person it engages to make telemarketing calls on its behalf (such as a call centre).

The industry standard sets out when and how a telemarketer or researcher can make calls. Specifically, the industry standard:

- > restricts when calls can be made
- > requires the caller to provide specific information during the call

- > requires the caller to terminate the call in certain circumstances
- > requires the caller to enable calling line identification.

The industry standard applies to any person or business intending to make telemarketing or research calls, including those that are exempt from the Act.

Further information on the rules for telemarketing can be found at [www.acma.gov.au/donotcall](http://www.acma.gov.au/donotcall).

### The ACMA's approach to compliance

The ACMA adopts a three staged approach to overseeing compliance with the DNC legislation. This approach comprises two facilitation stages: 'advise' and 'warn', and one formal stage: 'investigate'. In the first instance, the ACMA will seek to resolve a matter through facilitation. However, if this is unsuccessful or inappropriate, the ACMA will take appropriate investigatory action. The ACMA may also act more urgently on a case-by-case basis.

### Facilitation—What to expect

The first stage of facilitation ('advise') commences when the ACMA receives its first complaint about a telemarketer. At this time, the ACMA will write to the telemarketer to inform it that a complaint has been received and provide information about the DNC legislation and alleged call. The letter recommends the telemarketer review its telemarketing activities.

Monitoring of the telemarketer for compliance with the DNC legislation then commences.

Escalation to the next facilitation stage ('warn') usually occurs where a telemarketer receives five or more complaints within any 180 day period.

Where this occurs, a compliance officer from the ACMA will contact the telemarketer, usually by telephone, to advise that further complaints have been received and to discuss the steps the telemarketer is taking to comply with the DNC legislation. A letter with a summary of the most recent complaints is sent to assist the telemarketer in a critical review of its telemarketing activities.

During both the 'advise' and 'warn' stages, a telemarketer is invited to contact a compliance officer at the ACMA to discuss their obligations under the DNC legislation. **It is important that a telemarketer take advantage of this.**

For more serious cases, the ACMA may escalate a telemarketer from 'advise' to 'investigate', without progressing through the 'warning' stage.

Where no complaints are received about a telemarketer within a 180 day period, monitoring of the company will cease.

### Investigation—What to expect

The ACMA may commence an investigation if it has reason to suspect that a telemarketer has contravened the DNC legislation. While the majority of investigations are commenced after the two informal stages of monitoring, the ACMA retains the discretion to act more urgently if required.

Some of the factors the ACMA may take into consideration in deciding whether to investigate a telemarketer can include:

- > the number of complaints that have been received about the telemarketer, and over what period of time
- > the seriousness of the conduct described in the complaints
- > whether the telemarketer has been previously notified of potential compliance issues
- > whether the telemarketer contacted the ACMA after these notifications were sent
- > the extent to which the telemarketer has cooperated with the ACMA
- > whether the telemarketer is part of an industry sector that has serious, systemic or ongoing compliance issues
- > whether any new, untested or otherwise unique legislative issues would likely arise and all parties would benefit from its consideration.

### Investigation outcomes

An investigation can result in a number of outcomes. These include a finding of no contravention, decision not to investigate further, formal warning, enforceable

undertaking, infringement notice imposing a pecuniary penalty, and/or court action seeking the imposition of substantial fines.

The action taken will depend on the number and severity of contraventions identified as the result of an investigation.

Further information on the enforcement action available to the ACMA is available at [www.acma.gov.au/dncindustry](http://www.acma.gov.au/dncindustry)

### Escalations and de-escalations

While most cases will be handled in the above way, this compliance approach is designed to be flexible, to reduce the amount of unwanted calls quickly and effectively. As such, the ACMA retains the discretion to escalate or de-escalate the action taken to the most appropriate compliance stage.

### Do Not Call Register Act 2006— Compliance Guide

The *Do Not Call Register Act 2006 – Compliance Guide* (compliance guide) provides telemarketers with practical advice about how they can aim for best practice compliance with the Act. The compliance guide was developed by the ACMA in consultation with the telemarketing industry, and incorporates information gathered by the ACMA through its investigations.

The compliance guide is not intended as a statement of things that telemarketers must do to comply with the legislation, or as a list of measures that, if applied, would necessarily ensure a person's compliance. Its primary objective is to help telemarketers to meet their regulatory obligations under the legislation, and thereby reduce the number of prohibited calls made to numbers on the register.

The compliance guide is available online at [www.acma.gov.au/dncindustry](http://www.acma.gov.au/dncindustry) or you can request a copy by calling the Do Not Call Register Operator on 1300 785 749.

### Further information

Further information about the register, including a series of information sheets, can be found at [www.donotcall.gov.au](http://www.donotcall.gov.au) (by clicking 'Industry Website' and then 'More Information') or by calling the Do Not Call Register Operator on 1300 785 749.

*Please note: This publication intentionally avoids the use of legal language and information about the law may have been summarised or expressed in general statements. The information in this publication should not be relied upon as a substitute for professional legal advice or reference to the actual legislation.*

IS186 December 2010