

Do Not Call Register— Complaints and investigations

Information for industry

The Do Not Call Register (the register) provides Australians with the opportunity to ‘opt out’ of receiving certain telemarketing calls. The register is operated by Service Stream Solutions Pty Ltd (the register operator) on behalf of the Australian Communications and Media Authority (the ACMA).

The *Do Not Call Register Act 2006* (the Act) makes it an offence for a person (telemarketer) to make unsolicited telemarketing calls to an Australian number listed on the register, unless consent (express or inferred) has been obtained for the call. Any person that makes (or arranges for someone else to make) a telemarketing call to a number on the register may be in breach of the legislation, and faces significant penalties.

In addition to the above prohibitions under the Act, the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (the industry standard) sets rules about when and how telemarketers and market researchers can contact people. The industry standard applies to any person or organisation intending to make telemarketing or research calls, regardless of whether a number is on the register or whether the caller is exempt from complying with the register.

The ACMA’s approach to compliance

The ACMA’s general approach to compliance is to seek to resolve a matter, where appropriate, without resorting to formal procedures. In relation to telemarketing calls, the ACMA’s main focus will be to act to prevent unwanted calls from continuing or recurring by encouraging telemarketers to take appropriate action to avoid breaching the legislative scheme. However, if informal resolution is unsuccessful or inappropriate, the ACMA will take appropriate investigatory and enforcement action. While the focus of the ACMA’s compliance approach is on systemic breaches, the ACMA retains the discretion to decide to act more urgently on a case-by-case basis.

Making a complaint

A person who wishes to make a complaint about unsolicited telemarketing calls, breaches of the industry standard for telemarketing and research calls, or the operation of the register, may do so through the complaints form on the website at www.donotcall.gov.au or by calling the register operator on 1300 792 958.

To help the ACMA to respond effectively to consumer complaints, consumers are asked to provide as much information as possible, including:

- a) where known, the name, company name and contact details of the person that called
- b) if the call was made by a telemarketer on behalf of another company, the name and contact details of that other company
- c) the matters that the caller wanted to talk about
- d) any other information that may be relevant to an investigation of the matter.

The industry standard legally requires a telemarketer or researcher to provide the information (set out in (a)-(c) above) to a person called, either at the commencement of the call, or on request.

When making a complaint, complainants are asked a series of questions about whether they are prepared for certain information, such as their telephone number, to be released to the organisation which is subject to the complaint. If a complainant answers ‘no’ to any of these questions, the ACMA may not be able to investigate the matter further. The ACMA must provide certain minimum information to telemarketers to allow them to respond to the complaint.

The complaints handling process

All complaints are received initially by the register operator. If a complaint involves a potential breach of the Do Not Call Register scheme, it is forwarded to the ACMA for action. The ACMA will assess the complaint to determine whether it involves a breach of the Act. If so, The ACMA will write to the complainant and explain what action is being taken in relation to the complaint.

In most cases, the ACMA writes to telemarketers which are the subject of complaints, to inform them of their legal obligations. This enables organisations to review their processes and procedures to ensure appropriate precautions are taken to comply with the Do Not Call Register scheme.

However, if the ACMA receives multiple complaints about a particular telemarketer, or it believes that further breaches have occurred, then the ACMA will write to the telemarketer and either detail the complaints and monitor compliance for a specified period or take further action such as commencing an investigation.

This approach has the advantage of placing the onus on organisations undertaking telemarketing activities to take responsibility for their calls by putting procedures in place to check their calling lists against the register.

However, the ACMA will exercise its discretion to act more quickly where it considers it appropriate to do so and move directly to investigate where there is evidence of a systemic problem or serious compliance breaches.

Preliminary inquiries

The ACMA has the power to carry out preliminary inquiries and investigations into alleged breaches of the Do Not Call Register scheme under provisions in the *Telecommunications Act 1997*.

Before initiating an investigation, the ACMA may carry out a formal preliminary inquiry to ascertain whether it has the power to investigate the matter or whether the ACMA should, in its discretion, investigate the matter. Preliminary inquiries will generally be made, where relevant, to ascertain whether a telemarketer could seek to rely on any of the legal defences available to it under the Act.

Investigations

The ACMA is most likely to exercise its discretion to carry out a formal investigation where there is evidence that a telemarketer has not taken precautions to check calling lists or appears to be continually breaching the legislative scheme. This accords with the ACMA's focus on systemic breaches, where action is directed towards those giving rise to the greatest number of complaints, or the most significant types of breaches.

In general, an investigation may involve a number of steps, including obtaining a person's call records, searching relevant database records and seeking submissions from affected parties. Where an investigation involves numerous complaints and complainants, as will usually be the case, investigatory procedures may be complex and time-consuming.

Enforcement action

The ACMA has a range of enforcement options. These include formal warnings, enforceable undertakings, infringement notices imposing a pecuniary penalty and court action seeking the imposition of substantial fines.

The penalties which can be imposed are substantial. Under an infringement notice issued by the ACMA, the maximum penalty is \$110,000 for each day on which contraventions occurred. Under penalties imposed by the Federal Court, the maximum penalty is \$1.1 million for each day on which contraventions occurred.

Orders for compensation may also be made against the offender where the consumer has suffered loss or damage as a result of the infringement, as well as orders for the payment to the Commonwealth an amount representing the financial benefit gained from the infringement.

The action taken will depend on the number and severity of breaches found as a result of an investigation.

Further information

Further information about the register can be found at www.donotcall.gov.au.

A series of information sheets is also available on the ACMA website, at www.acma.gov.au/donotcall.

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

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