

Do Not Call Register Complaint handling policy

JULY 2010

Canberra

Purple Building
Benjamin Offices
Chan Street
Belconnen ACT

PO Box 78
Belconnen ACT 2616

T +61 2 6219 5555
F +61 2 6219 5353

Melbourne

Level 44
Melbourne Central Tower
360 Elizabeth Street
Melbourne VIC

PO Box 13112
Law Courts
Melbourne VIC 8010

T +61 3 9963 6800
F +61 3 9963 6899

Sydney

Level 15 Tower 1
Darling Park
201 Sussex Street
Sydney NSW

PO Box Q500
Queen Victoria Building
NSW 1230

T +61 2 9334 7700
1800 226 667
F +61 2 9334 7799

© Commonwealth of Australia 2010

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and enquiries concerning reproduction and rights should be addressed to the Manager, Communications and Publishing, Australian Communications and Media Authority, PO Box 13112 Law Courts, Melbourne Vic 8010.

Published by the Australian Communications and Media Authority

Contents

Introduction	1
The ACMA's role	1
Making a complaint about a telemarketing call or a marketing fax	1
The complaint handling process	2
What happens to your complaint?	2
Informal stage	3
Formal stage	3
What information can you expect to receive from the ACMA?	3
Further information	4

Introduction

The Do Not Call Register (the Register) enables Australian consumers to 'opt out' of receiving most telemarketing calls and marketing faxes. The aim of the Register is to reduce the number of unwanted telemarketing calls and marketing faxes.

Placing your number on the Register will not stop all telemarketing calls or marketing faxes to your number and you may still receive calls and/or faxes from:

- > businesses with which you have an existing relationship
- > businesses that you have consented to receive calls and/or faxes from (for example, by entering a competition)
- > charities
- > religious organisations
- > educational institutions
- > Government bodies and registered political parties/candidates.

For further information about the Register visit www.donotcall.gov.au.

The ACMA's role

The Australian Communications and Media Authority (the ACMA) is responsible for operating the Register, handling consumer complaints and overseeing compliance by telemarketers and fax marketers with the *Do Not Call Register Act 2006* and the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007.

In handling consumer complaints and overseeing compliance, the ACMA aims to minimise the number of prohibited telemarketing calls and marketing faxes that are made or sent to registered numbers. The ACMA achieves this in a range of ways, including by:

- > educating the telemarketing and fax marketing industries about the Register
- > writing to telemarketers and fax marketers when complaints are received and working with them to achieve compliance
- > conducting investigations and taking enforcement action where appropriate.

Consumer complaints are very valuable to the ACMA. The ACMA uses the information provided in consumer complaints to inform and target its education, warnings and investigations.

While the ACMA will assess every complaint and take appropriate action in line with this policy, not all individual complaints will be formally investigated.

Making a complaint about a telemarketing call or a marketing fax

You can make a complaint if you believe you have received:

- > a prohibited telemarketing call or marketing fax more than 30 days after placing your number on the Register
- > a telemarketing call or marketing fax that didn't comply with the relevant Industry Standard.

You will need to know the date and approximate time of the call or fax you received. It is also helpful if you know:

- > the name of the person making the call or sending the fax

- > the name of the company or business on whose behalf the call or fax was made or sent (for example, the caller/sender may be employed by one company but make the call/send the fax on behalf of another company)
- > the contact details (such as a website, telephone or fax number) of the companies/businesses involved
- > what the call or fax was about.

The more information you are able to provide which can help the ACMA identify and locate the company or business responsible, the more likely it is that the ACMA can take some action about the matter.

To make a complaint, you can fill in a complaint form at www.donotcall.gov.au or phone 1300 792 958.

The complaint handling process

All complaints are initially assessed by the Register Operator, to check whether there may be a potential breach of the DNCR Act and/or the relevant Industry Standard. If the complaint does appear to raise a potential breach, it is forwarded by the Register Operator to the ACMA for attention.

You can expect to receive an acknowledgement of your complaint from the Register Operator within two business days of making the complaint. You will be advised if your complaint is being referred to the ACMA for further assessment.

Where your complaint is referred to the ACMA, an ACMA staff member will review the complaint to assess:

- > whether the complaint raises a potential contravention of the DNCR Act and/or relevant Industry Standard, and, if it does,
- > whether the company or business that made the call or sent the fax can be identified.

Sometimes, you cannot identify who has called or faxed you. If this is the case, the ACMA will take reasonable steps to try to identify who has made the call or sent the fax. The steps the ACMA will take to identify a caller or sender will depend on the individual circumstances.

In some cases, the ACMA may, subject to you providing your consent, conduct a search of your inbound telephone records to identify the origin of the call or fax. These searches can sometimes be successful in identifying who has made a call or sent a fax.

The more information you provide to us in your complaint, the more likely it is that the ACMA will be able to identify the caller or sender.

What happens to your complaint?

The ACMA takes a graduated and strategic approach to compliance and enforcement which is aimed primarily at reducing prohibited calls and faxes to registered numbers as quickly and effectively as possible. The action taken by the ACMA is proportionate to the seriousness of the non-compliance.

What, if any, action taken by the ACMA will depend on the circumstances of each complaint. However, where the ACMA receives a complaint and can identify the caller or sender, it generally will adopt the following graduated approach:

Informal stage

1/ **Advise:** For first-time complaints, the ACMA will write to the telemarketer or fax marketer, advising that a complaint has been received. This letter provides information about the Register and the rules, and may recommend that it review its practices and procedures to ensure compliance.

After an advisory letter is sent, the ACMA monitors the business for 180 days.

2/ **Warn:** Where further complaints are received (generally five or more) in the 180 days following an advisory letter, the ACMA sends a warning letter to the telemarketer or fax marketer. The telemarketer or fax marketer is warned that the ACMA will monitor the business for 180 days and if further complaints are received, a formal investigation may be commenced and further action taken.

Formal stage

3/ **Investigate:** Where the ACMA continues to receive complaints after a warning letter has been sent, it may commence an investigation. In deciding whether to commence an investigation, the ACMA considers a range of factors, including: the number and nature of complaints received; any potential consumer detriment; whether the conduct appears to be ongoing and/or systemic; and any contact the ACMA has had with the business previously. The ACMA also considers how the investigation would support the ACMA's strategic focus in overseeing compliance with the Register.

The ACMA may escalate action more quickly where required, for example by moving straight to the warning stage without first sending an advisory letter. The ACMA may also de-escalate action where appropriate.

What information can you expect to receive from the ACMA?

When your complaint is forwarded to the ACMA for action, the ACMA will let you know:

- > whether the ACMA could identify the company or business making the telemarketing call or sending the marketing fax
- > if it could not be identified, what, if any, further assistance you may be able to provide
- > if it could be identified, what stage the ACMA's monitoring process is at (advise/warn)
- > whether the ACMA can provide other assistance to you (for example, by referring the matter to another agency where relevant, or having the business remove your number from its dialling list).

The majority of complaints are addressed at the informal stages. If the complaints are addressed at the informal stage the ACMA does not generally re-contact complainants.

If the ACMA commences an investigation, the ACMA will write to you:

- > at the commencement of the investigation, to notify you that a formal investigation is being undertaken
- > at the end of the investigation, to notify you of the outcome of the investigation.

Investigations may take several months to complete. The ACMA may contact you if it thinks that you can provide further evidence and information. However, the ACMA does not provide updates to complainants during the course of an investigation.

Where the ACMA finds it has reasonable grounds to believe a telemarketer or fax marketer has breached the legislation, it has a number of enforcement options

available to it. For further information, please refer to the *Enforcement action and penalties* information sheet available by visiting www.donotcall.gov.au or by calling 1300 792 958.

Further information

If you would like further information about the ACMA's telemarketing and fax marketing complaint handling practices, or have any questions or concerns about the handling of a complaint you have made, you can contact our investigations team at dncinvestigations@acma.gov.au or by calling 1300 792 958.