

# Do Not Call Register— Enforcement action and penalties

## Information for industry

### Introduction

The Do Not Call Register (the register) provides Australians with the opportunity to 'opt out' of receiving certain telemarketing calls and marketing faxes. The register is operated by Service Stream Solutions Pty Ltd. The legislative arrangements that establish the register include:

- > *the Do Not Call Register Act 2006* (the DNCR Act), which establishes the register, outlines rules for making telemarketing calls, sending marketing faxes and provides exceptions to the rules
- > the Do Not Call Register Regulations 2006, which specify the types of calls that are not telemarketing calls and the persons who are deemed to be nominees of a relevant account holder
- > the Telecommunications and Research Calls Industry Standard 2007 (the telemarketing and research calls industry standard), which sets rules for people who make telemarketing and research calls, about when and how they can make and must terminate such calls
- > the Fax Marketing Industry Standard 2011 (the fax marketing industry standard) which sets rules about when and how fax marketers can contact people.

### What can the ACMA investigate?

Under the *Telecommunications Act 1997* (Telecommunications Act), the ACMA can investigate alleged breaches of the Do Not Call Register Act, the fax marketing industry standard, and the telemarketing industry standard. In relation to the DNCR Act, the ACMA can investigate the following civil penalty provisions:

- > complaints from individuals about receiving an unsolicited telemarketing call or unsolicited marketing fax after they have registered their number on the register [section 11(1) and section 12B]
- > whether a person has been improperly involved in a breach of section 11(1) or section 12B above

- > whether agreements for making telemarketing calls or sending marketing faxes comply with the requirement to include an express provision to ensure that all parties to the agreement comply with the DNCR Act or, where applicable, to take all reasonable steps to comply with that Act [section 12(1)]
- > whether a person has been improperly involved in a breach of section 12(1) above.

In relation to the telemarketing and research calls industry standard, the ACMA can investigate:

- > complaints about a telemarketing or research call made outside of the allowable times
- > complaints about a telemarketing or research caller failing to provide the required information
- > complaints about a telemarketing or research caller failing to terminate the call when requested
- > complaints about a telemarketing or research caller failing to have Calling Line Identification enabled.

In relation to the fax marketing industry standard, the ACMA can investigate:

- > complaints about a marketing fax sent outside of the allowable times
- > complaints about a marketing fax that fails to provide the required information
- > complaints about a marketing fax that fails to offer a opt-out functionality
- > complaints about the number of marketing faxes that are sent in a particular period to a particular number.

The ACMA can also investigate whether ineligible numbers have been registered on the register. While no civil penalties apply in relation to these matters, numbers found to be ineligible are removed from the register under the Do Not Call Register (Administration and Operation) Determination 2007.

## Enforcement action

If the ACMA carries out an investigation and makes one or more findings that a person has breached the DNCR Act or the industry standards, it has a number of enforcement options available.

### Enforcement options for breaches of the DNCR Act

#### *Formal warning*

The ACMA may issue a formal warning under section 40 of the DNCR Act, where a person has breached a civil penalty provision.

#### *Enforceable undertakings*

Enforceable undertakings are used by the ACMA to address non-compliant behaviour and involve a formal undertaking to engage in, or refrain from, certain activities. Under section 572B of the Telecommunications Act, the ACMA can accept enforceable undertakings at any time, including during or following an investigation of a breach, or an alleged breach, of the DNCR Act. These undertakings are enforceable by the Federal Court.

#### *Infringement notice*

The object of an infringement notice is to provide an alternative to the institution of proceedings in the Federal Court or Federal Magistrates Court. The ACMA can impose pecuniary penalties through the imposition of an infringement notice under Schedule 3 to the DNCR Act, where a person has committed one or more breaches of a particular civil penalty provision. An infringement notice must be given within 12 months of the day on which the breaches are alleged to have occurred.

#### *Prosecution in the Federal Court or Federal Magistrates Court*

The ACMA may apply to the Federal Court or Federal Magistrates Court for an order, such as a civil penalty order, for a person to pay to the Commonwealth a pecuniary penalty if the court is satisfied that a person has contravened a civil penalty provision. This option is available to the ACMA where a person has either failed to comply with an infringement notice issued by the ACMA or where the alleged breaches otherwise warrant court proceedings.

#### *Injunctions in the Federal Court or Federal Magistrates Court*

The ACMA may apply to the Federal Court or Federal Magistrates Court for an injunction either to restrain a person from engaging in certain conduct or to require a person to perform certain acts. Injunctions may be sought by the ACMA if a person has engaged, is engaging, or is proposing to engage in any conduct that contravenes a civil penalty provision in the DNCR Act. Similarly, if a person has refused or failed, is refusing or failing, or proposing to refuse or fail to do something, and that refusal or failure amounts to a breach of a civil penalty provision, the ACMA may seek an injunction to require the act.

### Enforcement options for breaches of the telemarketing and research calls industry standard and the fax marketing industry standard

#### *Formal warning*

This is the same as for a breach of the DNCR Act, except that the warning is given under section 129 of the Telecommunications Act.

#### *Enforceable undertakings*

This is the same as for a breach of the DNCR Act.

#### *Penalties imposed by the Federal Court*

A failure to comply with the provisions of an industry standard amounts to a breach of a civil penalty provision by virtue of section 128 of the Telecommunications Act. The ACMA may apply to the Federal Court for an order (a civil penalty order) for a person to pay to the Commonwealth a pecuniary penalty if the court is satisfied that a person has contravened a civil penalty provision. The penalty amounts differ from those that apply under the DNCR Act.

#### *Industry standards*

Penalties imposed for breaches of the industry standards are determined by the provisions of the Telecommunications Act, rather than the DNCR Act. A breach of an industry standard would render a body corporate liable for a pecuniary penalty of up to \$250,000 and a person other than a body corporate, \$50,000 per breach. These penalties also apply to a person improperly involved in a breach of the industry standards.

#### *Enforceable undertakings*

This is the same as for a breach of the DNCR Act.

#### *Penalties imposed by the Federal Court*

A failure to comply with the provisions of the industry standards amounts to a breach of a civil penalty provision by virtue of section 128 of the Telecommunications Act. The ACMA may apply to the Federal Court for an order (a civil penalty order) for a person to pay to the Commonwealth a pecuniary penalty if the court is satisfied that a person has contravened a civil penalty provision. The penalty amounts differ from those that apply under the DNCR Act.

### Pecuniary penalties

#### *DNCR Act*

As noted under the Enforcement options section above, pecuniary penalties may be imposed either by an infringement notice issued by the ACMA or by an order of the Federal Court or Federal Magistrates Court. Maximum penalties are higher where they are imposed by a court. Penalty amounts are expressed in penalty units. One penalty unit equals \$110.

***Infringement notice penalties***

The amount of a penalty that may be imposed by an infringement notice will depend on:

- > how many breaches are alleged
- > whether the breach was by a body corporate or by a person other than a body corporate
- > which civil penalty provision has been breached.

The highest penalties are reserved for a body corporate which is found to have contravened, on multiple occasions, the prohibition to call a number on the register, or to have been improperly involved in such breaches.

***Breaches by a body corporate***

The penalty for one breach, by a body corporate, of the prohibition to call a number on the register (or being improperly involved in such a breach) is 20 penalty units (\$2,200). The penalty for 50 or more alleged breaches is 1,000 penalty units (\$110,000). For multiple breaches by a body corporate of this type that fall between one and 50 in number, the number of penalty units is obtained by multiplying the number of breaches by 20. For example, 30 breaches x 20 = 600 penalty units (\$66,000).

For breaches by a body corporate of a civil penalty provision, other than calling a number on the register or being improperly involved in such a breach, penalties range from 10 penalty units (\$1,100) for a single breach to 500 penalty units (\$55,000) for 50 or more breaches.

***Breaches by a person other than body corporate***

The penalty for one breach of the prohibition to call a number on the register, by a person other than a body corporate, is four penalty units (\$440) and for 50 or more breaches 200 penalty units (\$22,000). The same penalties apply for being improperly involved in such a breach. For multiple breaches of this type by a person other than a body corporate, that fall between 20 and 50 in number, the number of penalty units is calculated by multiplying the number of breaches by four.

For breaches by a person other than a body corporate of a civil penalty provision, other than calling a number on the register or being improperly involved in such a breach, the penalties range from two penalty units (\$220) for a single breach to 100 penalty units (\$11,000) for 50 or more breaches.

**Penalties imposed by the Federal Court or Federal Magistrates Court for breach of the DNCR Act**

The maximum penalty payable under an order of the court depends on:

- > whether the person has a prior record for a civil penalty provision
- > whether the breach was by a body corporate or by a person other than a body corporate
- > which civil penalty provision has been breached.

***Breaches by a body corporate***

The maximum penalty payable by a body corporate with no prior record, which has committed two or more breaches of the prohibition to call a number on the register, is 2,000 penalty units (\$220,000). If a prior record exists, the maximum penalty payable is 10,000 penalty units (\$1.1m). This also applies where a body corporate has been improperly involved in such a breach.

***Breaches by a person other than body corporate***

The maximum penalty payable by a person, other than a body corporate with no prior record, who has committed two or more breaches of the prohibition to call a number on the register, is 400 penalty units (\$44,000). This also applies where the person has been improperly involved in such a breach. If a prior record exists, the maximum penalty is 2,000 penalty units (\$220,000).

**Industry standards**

Penalties imposed for breaches of the industry standards are determined by the provisions of the Telecommunications Act, rather than the DNCR Act. A breach of an industry standard would render a body corporate liable for a pecuniary penalty of up to \$250,000 and a person other than a body corporate, \$50,000 per breach. These penalties also apply to a person improperly involved in a breach of an industry standard.

**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.*

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