

Final investigation report

Summary	
Entity	Investors Choice Group Pty Ltd
Australian Company Number	ACN 146 164 650
Type of activity	Telemarketing
Relevant Legislation	<i>Telecommunications Act 1997</i> <i>Telecommunications (Telemarketing and Research Calls) Industry Standard 2017</i>
Findings	6 contraventions of subsection 128(1) of the <i>Telecommunications Act 1997</i> [Compliance with industry standards], because of 6 contraventions of paragraph 9(2)(b) of the <i>Telecommunications (Telemarketing and Research Calls) Industry Standard 2017</i> [provision of information]
Date	16 March 2022

Background

1. On 11 October 2021, the Australian Communications and Media Authority (**ACMA**) commenced an investigation under the *Telecommunications Act 1997* (**Telecommunications Act**), into the compliance of Investors Choice Group Pty Ltd (**Investors Choice Group**) with the *Telecommunications (Telemarketing and Research Calls) Industry Standard 2017* (**Telemarketing Industry Standard**), following consumer complaints to the ACMA.
2. The investigation focused on 3 categories of telemarketing calls alleged to have been made by Investors Choice Group, being:
 - a. telemarketing calls made to specific numbers which were the subject of complaints to the ACMA (made between 18 February and 11 October 2021),
 - b. all telemarketing calls made during the period 23 August to 30 August 2021, and
 - c. all telemarketing calls made during the period 8 September to 15 September 2021.
3. The ACMA's findings are based on complaints provided by members of the public and information provided by Investors Choice Group, including in response to:
 - a. a notice dated 11 October 2021, given to it by the ACMA under section 522 of the *Telecommunications Act* (**the Notice**), and
 - b. the ACMA's preliminary findings of 8 February 2022.
4. The reasons for the ACMA's findings, including the key elements which establish the contraventions, are set out below.

Relevant legislative provisions

5. The Telemarketing Industry Standard is made under subsection 125A(1) of the *Telecommunications Act*. It establishes a minimum set of requirements for telemarketing and research calls.

6. Under subsection 128(1) of the Telecommunications Act, a participant in a section of the telemarketing industry must comply with the Telemarketing Industry Standard. Therefore, a contravention of the Telemarketing Industry Standard is a contravention of the Telecommunications Act.
7. Subsection 128(1) of the Telecommunications Act is a civil penalty provision, per subsection 128(3).
8. Under paragraph 9(2)(b) of the Telemarketing Industry Standard, as soon as a telemarketing call starts, if the individual making the call is not self-employed, a caller must give, or cause to be given, the company name or registered business name of the employer of the individual making the call, or if these details do not exist, a name by which the organisation or individual can be readily identified.

Reasons for findings

9. During the investigation, the ACMA established that the investigated calls were not made by self-employed individuals, accordingly the applicable compliance obligation concerns providing information about the company or registered business name of the individual making the call, under paragraph 9(2)(b) of the Telemarketing Industry Standard.
10. To determine Investment Choice Group's compliance with this provision, the ACMA must address the following:
 - a. Is Investors Choice Group required to comply with the Telemarketing Industry Standard?
 - b. If so, did Investors Choice Group make the investigated calls?
 - c. If so, were the investigated calls telemarketing calls?
 - d. If so, did Investors Choice Group fail to provide, as soon as the call starts, the company name or registered business name of the employer of the individual making the call, or if these details do not exist, a name by which the organisation or individual can be readily identified?
11. If these elements of the offence are met, then contraventions are established.

Is Investors Choice Group required to comply with the Telemarketing Industry Standard?

12. Investors Choice Group is a participant of the telemarketing industry as it carries on telemarketing calls to market, advertise or promote goods or services. Specifically, it makes telemarketing calls promoting property investment products and services.
13. It is therefore a participant in a section of the telemarketing industry and must comply with the Telemarketing Industry Standard (see paragraph 109B(3)(a) and subsection 128(1) of the Telecommunications Act).

Did Investors Choice Group make the investigated calls?

14. In response to the Notice, Investors Choice Group stated that it was responsible for making each of the investigated calls. It provided details of these calls made between 18 February and 11 October 2021, including selected call recordings.
15. Accordingly, Investors Choice Group made the investigated calls.

Were the investigated calls telemarketing calls?

16. Investors Choice Group provided the call scripts of each of the calls. The call scripts showed that the purpose of the calls was to promote its property investment products and services.
17. Accordingly, the calls were telemarketing calls as they promoted Investors Choice Group's products and services.

Did Investors Choice Group fail to provide, as soon as the call started, the company name or registered business name of the employer of the individual making the call, or if these details do not exist, a name by which the organisation can be readily identified?

18. As outlined in **Attachment A**, in six calls, as substantiated in call recordings, callers fail to provide, as soon as the call started, the company name or registered business name of the employer of the individual making each call.
19. The caller states they are calling from 'ICG' in each of the 6 calls, which is not the company name or registered business name of the employer of the individual making the call. As a company name exists, Investors Choice Group is precluded from using an alternative name by which the organisation can be readily identified.
20. Notwithstanding the above, the ACMA does not accept that Investors Choice Group could be readily identified from the shortened form 'ICG' spoken at the start of each call.
21. Therefore, Investors Choice Group contravened paragraph 9(2)(b) of the Telemarketing Industry Standard in relation to the six calls.

Conclusion

22. The ACMA finds that there are reasonable grounds to believe that Investors Choice Group has contravened:
 - a. subsection 128(1) of the Telecommunications Act on 6 occasions between 18 February and 25 August 2021, inclusive, by contravening paragraph 9(2)(b) of the Telemarketing Industry Standard in relation to six telemarketing calls.

The details are set out in **Attachment A**.

Attachment

Attachment A – Telemarketing Industry Standard contravention details.