



# Do Not Call Register – Calls to business numbers

The Do Not Call Register provides Australians with the opportunity to opt out of receiving certain telemarketing calls. The register is operated by Service Stream Solutions Pty Ltd.

Individual telephone account holders or their nominees can place their Australian fixed line and mobile telephone numbers on the register, provided the numbers are used or maintained exclusively or primarily for private or domestic purposes. Telephone numbers that are not used exclusively or primarily for private or domestic purposes, such as business numbers, are not eligible to be entered on the register.

The government has decided that limiting the register to private and domestic numbers provides an appropriate balance between the rights of individuals to privacy and the needs of businesses to promote their products and services.

## Primarily for private or domestic purposes

When applying to enter their telephone number on the register, a person is required to state that the number is used primarily for private or domestic purposes before the number can be registered.

In practice, whether a number is used primarily for private or domestic purposes can only be answered on a case-by-case basis. It may depend on how the number is used, because even if the number is used for *some* business calls, it may still be eligible to be registered if its *primary* purpose is private or domestic.

In general, a number is likely to be used primarily for *private or domestic purposes* where:

- the telephone account is in an individual's name
- the telephone is located at a residential address.

Some factors which may indicate the number is used primarily for *business purposes* and is not eligible to be placed on the register include:

- the number is listed in a current business directory or on a business website
- the number is in fact used mainly for business calls

- the telephone account is registered in the name of a business
- the number is displayed on a company business card.

## Removal of ineligible numbers

In the first instance, enquiries and complaints about numbers entered on the register should be directed to the register operator. If the matter concerns a potential breach of the Act, such as the eligibility requirements, the complaint will be referred to ACMA for investigation.

Where ACMA is satisfied that a number entered on the register is not used primarily for private or domestic purposes, it will have the number removed from the register as required by section 8 of the *Do Not Call Register (Administration and Operation) Determination 2007*.

Before removing a number from the register, ACMA will advise the telephone account holder that the number is to be removed. ACMA will give the account holder the opportunity to provide their reasons for believing the number is used primarily for private or domestic purposes, before the number is removed.

Telemarketing calls may be made to the number once it is removed from the register at the times permitted under the *Telecommunications (Do Not Call Register)(Telemarketing and Research Calls) Industry Standard 2007*.

## Telemarketing calls made to ineligibly registered numbers

Under section 11 of the *Do Not Call Register Act 2006* (the Act), a person must not make a telemarketing call, or cause a telemarketing call to be made, to number that is registered on the register. ACMA has established a system for people who make telemarketing calls, or cause telemarketing calls to be made, to check (or 'wash') their calling lists against the register. This system provides an effective way for people to ensure they do not contravene the requirements of the Act.

Where a telemarketing call is made to a number listed on the register, the call recipient can make a complaint to ACMA. ACMA will investigate the matter and assess whether a breach has occurred.

There is a range of defences under the Act. These are, in summary:

- during the 30 days preceding the date on which the call was made, the person received advice in response to a washing application, which indicated that the number was not listed on the register
- the relevant telephone account holder (or their nominee) consented to the making of the call
- the person made the call, or caused the call to be made, by mistake
- the person took reasonable precautions, and exercised due diligence, to avoid the contravention.

Where a person has not checked their calling list against the register, on the basis that they only make calls to business numbers, they will risk calling registered numbers.

A telemarketer wanting to make telemarketing calls to 'business numbers' without washing the numbers against the register must ensure they meet the requirements of taking reasonable precautions and exercising due diligence (or some other defence) under the Act. This means that people who make telemarketing calls of this kind need to review their current practices in order to obtain the protection offered by the defence on which they are relying.

If ACMA receives a complaint about a telemarketing call to a 'business number' that is on the register, it will carry out an investigation into the eligibility of the number for registration. ACMA may also consider the adequacy of any defence relied on by the person who made the telemarketing call. Referring to the individual circumstances, ACMA will assess each case to determine whether reasonable precautions were taken and due diligence exercised.

Checking a number against a current business directory, such as the Yellow Pages Online, will assist in establishing that reasonable precautions have been taken and due diligence has been exercised, but may not always suffice in all circumstances. For example, if the 'business number' is in the name of an individual person, it may be harder to establish the defence than if the 'business number' was in a name that is recognisably a business name.

If a person chooses not to wash their lists, and adopts alternative processes for ensuring compliance with the Act, the burden of establishing the defence that they took reasonable precautions and exercised due diligence lies with that person in the event of a complaint. In effect, this means that a person who is seeking to rely on one of the defences under the Act should keep appropriate records to show that the defence has been established.

## **Disclaimer**

This publication is intended as a guide only. It is not legal advice and should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. You should seek professional advice before taking any action based on its contents.

## **Further information**

Further information about the Do Not Call Register can be found at [www.donotcall.gov.au](http://www.donotcall.gov.au).

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