



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. 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*, which establishes the register, outlines rules for making telemarketing calls
- 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 telephone account holder
- the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* (the 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.

What can ACMA investigate?

Under the *Telecommunications Act 1997*, ACMA can investigate alleged breaches of the Do Not Call Register Act and the Industry Standard. In relation to the Do Not Call Register Act, ACMA can investigate the following **civil penalty provisions**:

- complaints from individuals about receiving an unsolicited telemarketing call after they have registered their number on the Do Not Call Register [s.11(1)]
- whether a person has been improperly involved in a breach of section 11(1) above
- whether agreements for making telemarketing calls comply with the requirement to include an express provision to ensure that all parties to the agreement comply with the Do Not Call Register Act or, where applicable, to take all reasonable steps to comply with that Act [s.12(1)], and/or
- whether a person has been improperly involved in a breach of section 12(1) above.

In relation to the industry standard, 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, and/or
- complaints about a telemarketing or research caller failing to have Calling Line Identification enabled.

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 ACMA carries out an investigation and makes one or more findings that a person has breached the Do Not Call Register Act or industry standard, it has a number of enforcement options available.

Enforcement options for breaches of the Do Not Call Register Act

Formal warning

ACMA may issue a formal warning under section 40 of the Do Not Call Register Act, where a person has breached a civil penalty provision. ACMA will generally make public comment at the same time as issuing a formal warning.

Enforceable undertakings

Enforceable undertakings are used by 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, ACMA can accept enforceable undertakings at any time, including during or following an investigation of a breach, or an

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alleged breach, of the Do Not Call 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. ACMA can impose pecuniary penalties through the imposition of an infringement notice under Schedule 3 to the Do Not Call Register 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

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 ACMA where a person has either failed to comply with an infringement notice issued by ACMA or where the alleged breaches otherwise warrant court proceedings.

Injunctions in the Federal Court or Federal Magistrates Court

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 ACMA if a person has engaged, is engaging, or is proposing to engage in any conduct that contravenes a civil penalty provision in the Do Not Call Register 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, ACMA may seek an injunction to require the act.

Enforcement options for breaches of the industry standard

Formal warning

This is the same as for a breach of the Do Not Call Register 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 Do Not Call Register Act.

Penalties imposed by the Federal Court

A failure to comply with the provisions of the industry standard amounts to a breach of a civil penalty provision by virtue of section 128 of the Telecommunications Act. 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 Do Not Call Register Act.

Pecuniary penalties

Do Not Call Register Act

As noted under the Enforcement options section above, pecuniary penalties may be imposed either by an infringement notice issued by 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 Do Not Call Register 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 standard

Penalties imposed for breaches of the industry standard are determined by the provisions of the Telecommunications Act, rather than the Do Not Call Register Act. A breach of the 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 standard.

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.

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