

Register tops 1.5 million

Australians are embracing the Do Not Call Register as a way to opt out of receiving telemarketing calls, with more than one and a half million telephone numbers listed since the register was launched in early May.

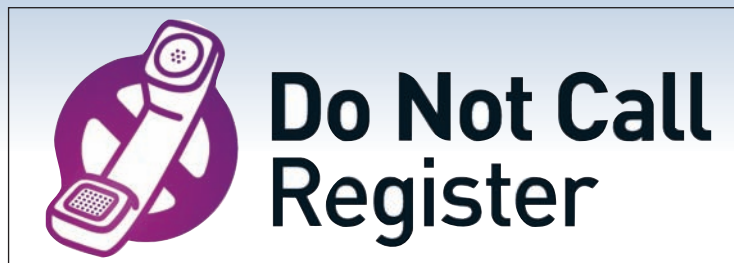
Under the *Do Not Call Register Act 2006*, it is illegal to make telemarketing calls to numbers on the Do Not Call Register. Businesses wishing to make telemarketing calls can avoid possible penalties by checking or 'washing' their lists against the register.

Already, businesses have taken out more than 1,100 subscriptions to wash telephone numbers with the register and more than 146 million 'washes' or checks have been performed to see whether a number has been listed on the register and cannot be called.

The number of businesses that have taken steps to adapt their systems and wash lists is encouraging and more are expected to follow suit as industry becomes increasingly familiar with the legislative requirements.

ACMA recognises that industry has needed time to adjust systems to comply with the Do Not Call Register legislation and will continue to focus on education and informal resolution of complaints in the short term.

However, telemarketers should note that, after the initial period of education and adjustment, ACMA will investigate complaints and enforce compliance with the legislation. While the preferred approach is to resolve matters informally, if necessary ACMA will take formal enforcement action,



including issuing formal warnings and infringement notices, and commencing court proceedings where required.

Exemptions exist for certain public interest entities such as charities, educational or religious organisations and political parties. Market and social researchers conducting opinion polling and standard questionnaire-based research calls are also permitted to call people who have registered their telephone numbers. It is also legal for businesses to call customers with whom they have a relationship and who have consented to receive the call.

If consumers receive non-exempt telemarketing calls more than a month after registering on the Do Not Call Register, they can lodge a complaint. Since the official

commencement of the register on 31 May, more than 5,000 complaints have been lodged about alleged breaches of the Do Not Call Register Act and industry standard.

Complaints can be lodged online on the Do Not Call Register website at www.donotcall.gov.au or through the Do Not Call complaints line on telephone 1300 792 958. Consumers can also list their number on the register by calling this number or can register online. A postal registration form is available from ACMA or in a brochure available from Australia Post outlets, and is on the ACMA website at www.acma.gov.au (For the public: Content & advertising > Telecommunications: Do Not Call Register – Information for the public).

Largest anti-spam penalty for DC Marketing

ACMA has issued an infringement notice to DC Marketing Europe Limited with a penalty of \$149,600 for extensive breaches of the *Spam Act 2003*—the largest penalty imposed by ACMA since the Spam Act's penalty provisions came into force in April 2004.

DC Marketing was penalised for 102 contraventions involving 'missed call' marketing activities in July and August 2006. Missed call marketing involves sending short-duration calls to mobile phones to leave a missed call message on the phone.

When mobile phone owners returned calls, they received marketing information from DC Marketing. Consumers had no way of knowing who the missed call was from before calling DC Marketing and so effectively paid to receive DC

Marketing's marketing messages. The missed call marketing messages sent out by DC Marketing were unsolicited, did not identify the sender and did not contain an unsubscribe facility, each of which is a breach of the Spam Act.

ACMA Chairman Chris Chapman said that consumers need to feel confident that they are not going to be deceived into receiving unwanted marketing messages on their mobile phone. He added that this penalty should serve as a warning to all service providers that ACMA will act decisively against conduct that breaches the Spam Act.

With increased resources from this year's Budget, ACMA will significantly increase its anti-spam activities over the next year and will closely monitor the mobile marketing

industry's compliance with the Spam Act. Repeat offenders face potential penalties of up to \$1.1 million per day.

The Spam Act regulates unsolicited commercial electronic messaging in Australia. Commercial electronic messages can be emails, SMS, MMS, instant messaging or any other similar messages, such as missed call marketing messages. Voice calls and faxes are not covered by the Spam Act. Missed call marketing messages are covered by the Spam Act because there is no voice component to the call and an electronic message is displayed on the recipient's phone.

The Spam Act requires a commercial electronic message to have the following features:

- Consent—it must not be sent without the recipient's consent
- Identity—it must contain accurate information about the person or organisation that authorised the sending of the message
- Unsubscribe—it must contain a functional 'unsubscribe' facility to allow the recipient to opt out of receiving messages from that source in the future.

In the contraventions identified in ACMA's Infringement Notice, DC Marketing's missed call marketing messages did not comply with any of these requirements.

More information about spam, the SpamMATTERS reporting system and how to make a complaint about spam is on the ACMA website at www.spam.acma.gov.au.