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Westpac warned for calling numbers listed on the Do Not Call Register

ACMA issued a formal warning to Westpac Banking Corporation (Westpac) on 13 February 2009, after finding that its call centres had made prohibited telemarketing calls to numbers on the Do Not Call Register.



After receiving more complaints about Westpac than any other bank, ACMA conducted a formal investigation, which found that Westpac had breached the *Do Not Call Register Act 2006* (the Act) by causing telemarketing calls to be made to people whose numbers were on the register. While the calls were made to existing customers of Westpac, the customers had asked not to be contacted by the bank about its products or services.

CONSENT

Under the Act, numbers on the register can be called if the telemarketing call is made with consent. Consent can be either *express* (for example, where a person ticks a box on a form agreeing to receive telemarketing calls from a particular business), or *inferred* by a business on the basis of its relationship with a person, or by a person's conduct.

Consumers are entitled to withdraw their consent to be called by a particular business at any time. Once consent has been withdrawn, no subsequent telemarketing calls can be made to

the consumer by that business.

While Westpac had an existing relationship with the consumers concerned, ACMA's investigation found that its procedures for recording the withdrawal of consent had failed, so that subsequent telemarketing calls were made to these consumers despite their consent having been withdrawn.

THE IMPORTANCE OF RECORD-KEEPING

Businesses should maintain comprehensive records about all aspects of their telemarketing activities as part of their standard business procedures.

Good record-keeping helps businesses to identify and resolve compliance matters themselves, and makes it less likely that consumers will make complaints to ACMA. Where consumers do make complaints to ACMA, good record-keeping can also help—to ensure that the complaints are resolved as promptly and informally as possible.

In particular, businesses seeking to rely on the defence of consent to make calls to registered numbers should:

1. Record evidence to demonstrate that consent existed at the time the call was made:
 - For express consent, this may include, for example, a completed and signed competition entry form or account creation form in which a consumer clearly expressed his or her willingness to receive telemarketing calls from the business.
 - For inferred consent, it may include evidence to demonstrate that a business had an existing relationship with a consumer, on the basis of which it would be reasonable to infer that the consumer would have been willing to receive telemarketing calls from the business.
2. Create and maintain an internal 'do not call' list with the details of consumers who have advised that they do not wish to be called by the business again.

Businesses should maintain comprehensive records about all aspects of their telemarketing activities as part of their standard business procedures.

These records should be maintained in a readily searchable electronic format for at least 12 months.

In the near future, ACMA will be releasing a comprehensive 'best practice compliance' booklet to help telemarketers from all industries meet their regulatory obligations in relation to the Act.

COMPLIANCE WITH THE REGISTER TO DATE

Since the register took effect on 31 May 2007, ACMA has received over 40,000 consumer complaints.

Although telecommunications companies account for the majority (around 55%) of complaints, around six per cent are attributable to banks and other financial institutions. While telemarketing by Westpac had given rise to more complaints than any other bank, ACMA is monitoring the compliance of several other financial institutions closely.

ACMA's general approach to compliance is

to seek to resolve a matter, where appropriate, without resorting to formal procedures. Where complaints are received, ACMA generally issues an advisory letter to the relevant business providing it with an opportunity to review its compliance processes and address the apparent issues. When an informal approach to a business has not been effective in addressing the apparent compliance issues, ACMA undertakes a formal investigation into the matter.

ACMA has commenced 30 formal investigations into alleged contraventions of the Act to date. Enforcement actions arising from these investigations include:

- four infringement notices, with the largest penalty paid being \$147,400 by Dodo Australia
- eight enforceable undertakings
- seven formal warnings.

This approach to compliance has been successful in reducing the number of complaints made by consumers, with complaint numbers dropping

by 60 per cent from the last half of 2007 to the last half of 2008.

It is ACMA's view that the complaints it continues to receive are largely due to systemic non-compliance within a relatively small section of the telemarketing industry. ACMA estimates that five per cent of the businesses complained about are responsible for about 70 per cent of the total complaints received. ACMA's formal investigations continue to focus on these businesses.

FURTHER INFORMATION

Detailed information about the compliance requirements of the Act is available on the register website www.donotcall.gov.au, under the 'Industry website' tab.

For further information about any matters discussed in this article, contact ACMA's Telemarketing Investigation Section at DNCRInvestigations@acma.gov.au.

Warning issued to consumers over Do Not Call hoax email

On 20 March 2009, ACMA issued a consumer alert advising of a 'chain' or 'viral' email in widespread circulation relating to the Do Not Call Register. The email provides misinformation that users' mobile numbers will be made 'public' and a further incorrect statement that as a consequence mobile telephone users will be charged for calls made by telemarketing companies to their mobile service.

While the email refers to the Australian Do Not Call Register website, it appears to have originated in North America a number of years ago and has been intermittently circulating since that time. The reference to consumers being 'charged' arises from the different charging regime for mobile calls in the US, where charges are often incurred by mobile phone-users for calls they receive. This charging regime does not apply in Australia.

The Australian Do Not Call Register has strong mechanisms in place to protect the privacy of registrants. The numbers on the Do Not Call Register are never provided directly to telemarketers.

ACMA recommends that recipients of the email delete it and not forward it on to other email users.

Here is a version of the hoax email being circulated:

REMEMBER: Mobile Phone Numbers Go Public next month.

REMINDER ... all mobile phone numbers are being released to telemarketing companies and you will start to receive sale calls.

YOU WILL BE CHARGED FOR THESE CALLS

Below is a link where you can enter your phone numbers online to put an end to telemarketing calls.

www.donotcall.gov.au

The widespread circulation of the email has been accompanied by a sharp rise in the rate of registrations on the Do Not Call Register since mid-March 2009, particularly of mobile numbers. The extent to which email users were genuinely concerned about being charged for telemarketing calls to their mobile is unknown, but it is apparent that many email users have followed the link in the email to the Do Not Call Register website. At the end of February 2009 the total number of registrations was 2.74 million, with registrations averaging approximately 30,000 per month for the three preceding months. As of 26 March 2009, the total number of registrations had risen to 3.14 million.