



Businesses advised to review their third party telemarketing agreements

Businesses that outsource telemarketing should review their contracts and ensure that they include a requirement to comply with the *Do Not Call Register Act 2006*.

The ACMA recently issued an infringement notice to Neighbourhood Energy for \$22,000, after it found that one of their outsourced call centres made telemarketing calls to numbers listed on the Do Not Call Register.

As well as the infringement notice, the ACMA issued a formal warning to Neighbourhood Energy, for failing to include an express provision in its contracts with its call centres requiring compliance with the DNCR Act. This is the first time that the ACMA has taken action against a company for a contravention of this particular part of the DNCR Act.

Contracts with outsourced call centres

Under subsection 12(1) of the DNCR Act, businesses that outsource telemarketing to third parties (including those that are based overseas) must include an express provision in the contracts, arrangements or understandings (agreements) with those third parties, requiring compliance with the DNCR Act.

Where a business fails to include this express provision, the ACMA may take action. This can include issuing a formal warning, an infringement notice or seeking penalties in the Federal Court.

Under section 139 of the *Telecommunications Act 1997*, businesses must also include an express provision in their agreements that requires compliance with the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007.

Clear and comprehensive agreements

Under subsection 11(1) of the DNCR Act, businesses may be held accountable for calls made to registered numbers by a third party acting under a telemarketing agreement. For this reason, it is important to specify the respective responsibilities of both the contracted party and the contracting party in relation to each relevant matter of compliance under the DNCR Act. This ensures that both parties have a clear understanding of what is required from them during the term of the contract.

The Do Not Call Register Act 2006 Compliance Guide has a useful 'Telemarketing Agreements Checklist' for businesses to use when reviewing their contracts with outsourced call centres.

The importance of monitoring your agreements

Businesses should monitor outsourced call centres to make sure that they are complying with their agreements, and should take steps to enforce their agreements where they identify non-compliance.

Businesses should monitor outsourced call centres to make sure that they are complying with their agreements, and should take steps to enforce their agreements where they identify non-compliance.

Even if a business has agreements in place with third party call centres requiring compliance with the DNCR Act, it could still be liable for contraventions of subsection 11(1) of the Act. This could happen if calls are made to registered numbers and the business has not been diligent in enforcing its agreements.

It is particularly important for businesses to enforce all agreements when telemarketing has been outsourced to overseas call centres. Given the distance and lack of physical presence of a business in their overseas call centre, the risk of contravening the DNCR Act significantly increases.


How to monitor contracts

Compliance reports should be used regularly for monitoring and enforcing agreements, and for taking action if the contracted party has not complied with the DNCR Act.

These compliance reports should occur regularly during the term of the agreement and can include:

- > Reviewing washing receipts to confirm that lists of phone numbers have been washed against the Do Not Call Register in the prescribed timeframes.

- > Reviewing the contracted party's outbound calling records or autodialler reports to determine whether it has called registered numbers, by comparing the call records or reports against the corresponding washed calling list.
- > Reviewing consumer complaint records to identify any broader compliance problems.

For further information regarding monitoring and enforcing agreements, please refer to the compliance guide. 

For more information about the compliance requirements of the DNCR Act, including a link to the compliance guide, visit www.donotcall.gov.au, and click the 'Industry website' tab.

For further information about any matters discussed in this article, or to obtain a hard copy of the compliance guide, please contact the ACMA's Telemarketing Investigations Section at DNCRinvestigations@acma.gov.au.