A preliminary report on the economic impacts of an extension of the Do Not Call Register

13 August 2009

Report by Access Economics Pty Limited for

Australian Direct Marketing Association (ADMA)

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1 Introduction

In the 2009-10 Budget, the Federal Government announced plans to extend the Do Not Call Register (DNCR) to include all telephone and fax numbers. Currently, the DNCR only allows numbers that are used solely or primarily for residential purposes to be put on the DNCR. The proposed extension of the DNCR will enable all government, business, fax and emergency services numbers that are currently unable to register their number to opt out of receiving unsolicited telemarketing calls.

The Australian Direct Marketing Association (ADMA) has commissioned Access Economics to analyse the economic impact of a proposed extension of the DNCR.

The proposed extension aims to address the productivity concerns that unwanted calls and faxes are diverting business resources from their core business activities and adversely affecting the operation of emergency services. Although these are legitimate concerns, the proposed changes will also increase compliance costs and reduce the effectiveness of telemarketing for businesses that engage in business-to-business telemarketing. The increased compliance costs and reduced effectiveness of telemarketing will have flow-on economic impacts on competition and innovation, especially since new entrants have used telemarketing as a means of entering markets.

This is a preliminary report that provides the main conceptual framework for analysing the effect of the proposed extension of the DNCR. It has been written in a short amount of time to meet ADMA's deadlines. A subsequent report will provide a more detailed analysis that incorporates data to estimate the economic impacts of an extension of the DNCR. As such, the final report will provide firmer conclusions than this preliminary report.

This report focuses on outbound telemarketing, in line with the terminology used in the *Do Not Call Register Act 2006* (DNCR Act). Outbound telemarketing is defined to include a call offering to supply, provide, advertise or promote goods, services, land or a business or investment opportunity. 'Cold calling', where no previous relationship exists between the parties, is only one part of the outbound telemarketing industry. It should be noted that the industry uses alternative terminology such as 'customer acquisition by phone'. While it is acknowledged that terminology can elicit different perceptions, the ability to market effectively is an essential part of any market economy.

The report is structured as follows:

- Section 2 of this report describes the DNCR and its operational rules. It also outlines the proposed changes as indicated in the 2009-10 Federal Budget.
- Section 3 provides an outline of the outbound telemarketing industry.
- Section 4 discusses the effect of extending the DNCR, including compliance and efficiency costs in addition to benefits such as reduced administration costs for businesses that choose to register. It also includes a discussion of the impact on competition, especially for new market entrants.
- Section 5 provides preliminary concluding remarks.

2 The Do Not Call Register

This section provides a description of the Do Not Call Register (DNCR) as it currently operates and an outline of the proposed extension to the DNCR.

2.1 The current Do Not Call Register

The *Do Not Call Register Act 2006* (DNCR Act) (Cth) prohibits telemarketing calls to a number listed on the DNCR, without consent, unless the call falls within an exempt category. Any Australian fixed line and mobile number can be placed on the DNCR, provided the numbers are used primarily for private or domestic purposes.

Consent may be provided expressly, for example by ticking a box on a form agreeing to receive calls, or it may be inferred by a business if you have an existing relationship with the business.

Certain public interest organisations are exempt from the DNCR Act. These exempt organisations are still allowed to make specific types of telemarketing calls to phone numbers listed on the DNCR. Exempt organisations include: charities or charitable institutions; educational institutions; religious organisations; government bodies; registered political parties; independent members of parliament; and political candidates.

Contraventions of the DNCR Act may incur a range of penalties, including formal warnings, injunctions and financial penalties of up to $220,000 per day. To avoid penalties, a business would check (or 'wash') their calling lists against the DNCR to ensure they do not call those numbers on the DNCR.

Telemarketing

Telemarketing is broadly defined in the DNCR Act. Generally it includes a call offering to supply, provide, advertise or promote goods, services, land or a business or investment opportunity, and the soliciting of donations[1]. The legislation also gives a broad definition to a telemarketing call, which is taken to include a voice call (including a recorded or synthetic voice message) and a telemarketer leaving a voice message on an answering service.

The DNCR Act does not prohibit calls that have no commercial marketing element such as market research calls (to conduct opinion polling or a standard questionnaire-based research). These calls are covered by a separate standard, called the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (the Standard). The Standard applies to any person or business intending to make telemarketing or market research calls, even if they come within an exempt category of the DNCR Act.

This Standard includes requirements that cover:

- when telemarketing and research calls cannot be made;
- information that must be provided during a telemarketing or research call;
- when calls must be terminated; and

[1] *Do Not Call Register Act 2006* (Cth) s 5

- the use of calling line identification.

2.2 Expansion of the Do Not Call Register

In the 2009-10 Budget, the Federal Government announced plans to extend the DNCR to include all telephone and fax numbers. This extension will now allow all government, business, fax and emergency services numbers to be put on the DNCR.

Business-to-business exemption

The Department of Broadband, Communications and the Digital Economy (2008) indicated in its discussion paper that if all telephone numbers are eligible to be registered, this may impinge on business-to-business communications.

The Minister has indicated that the amendment to the DNCR Act will include an exemption for business-to-business communications[2]. Under the proposed exemption, telemarketers would be allowed to contact a business where the content of the call is 'significantly related' to the 'core activity' of the operation of the recipient business. For example, the proposed exemption may allow a tennis racquet supplier to call a sports products retailer, but not a retailer of electronics products; an accounting firm may not be allowed to call either firm.

It is proposed that the business-to-business provision will extend the existing inferred consent provisions. As with the current inferred consent provisions, a business would be able to withdraw their consent to receive future calls. It is also proposed that the onus is on the telemarketer to prove that consent exists, which will probably require the telemarketer to keep records of the purpose of the call and information gathered on the recipient business prior to making a telemarketing call.

[2] http://www.minister.dbcde.gov.au/media/media_releases/2009/038

3 The telemarketing industry

Telemarketing can be either inbound – where calls are received by the call centre – or outbound – where the call centre makes the outbound call. It is outbound telemarketing that will be affected by the DNCR.

The sections below outline the telemarketing industry.

Although these statistics are about the 'contact centres' with the primary or secondary function of outbound telemarketing, the use of telemarketing is economy wide. 'Telemarketing', as defined by the DNCR Act, potentially covers any phone call between two businesses where there is an offer to supply, provide, advertise or promote goods, services, land or a business or investment opportunity, and the soliciting of donations. The definition of telemarketing would include phone calls to arrange meetings to discuss the supply of services or follow-up phone calls to recent customers to see if they require any other goods or services. Notwithstanding the potential business-to-business exemption, the scope of phone calls that are potentially covered by the extension to the DNCR is wide.

3.1 Outbound telemarketing

Outbound telemarketing services are just one of the activities that occur in contact centres i.e. centres dedicated to servicing and interacting with customers or potential customers. According to callcenters.net (2008) 9% of contact centres have a primary function of outbound telemarketing[3]. This compares to 16% of contact centres that have a primary function of inbound sales, 56% with a primary function of customer service and 10% with a primary function of technical support.

While the percentage of contact centres that list their primary function as outbound telemarketing is small, there are more contact centres whose secondary function is outbound telemarketing. According to the Australian Teleservices Association (2006), 21% of centres list their secondary function as outbound calling (6% list it as their primary function). Vivaz (2006) in the Australian Contact Centre Survey Report estimates that the percentage of call centres with telemarketing as a secondary function is 16% (9% list it as their primary function).

The Australian Bureau of Statistics estimates that 16,400 people were employed in telemarketing roles in 2006, however it is likely that this estimate does not include staff employed in contact centres where outbound telemarketing in the secondary function. The Australian Teleservices Association indicated to Access Economics (2007) that 50,000 is a reasonable estimate of the number of full time equivalent employees involved with telemarketing in Australia.

It should be noted that the statistics above are not exactly representative of the telemarketing calls that are or will be covered by the DNCR Act. On one hand, the statistics above cover calls to existing customers, which are not prohibited under the DNCR Act. On the other hand, the statistics only cover contact centres, and does not cover the calls that are made from a business that is not a contact centre e.g. day to day calls from one business to another.

[3] In Australia, there are approximately 3,700 contact centres operated by 1,700 organisations working across a number of industries (e.g. government, education and health, finance, banking and insurance, business services and media, and IT).

3.2 Volume and value of outbound telemarketing calls

Access Economics (2007) considers that the number of telemarketing calls in Australia that would need to be washed by the DNCR in 2007 would be between 150 and 400 million calls. These figures were forward looking estimates of the volume of telemarketing calls, excluding calls by charities and market researchers and business-to-business calls.

The Direct Marketing Association (United Kingdom) (2005) indicates that 80% of telemarketing sales calls are business-to-residential, while 20% are business-to-business. The 2007 report by Access Economics states a number of contact centre managers deemed that 20% is an appropriate estimate of the proportion of business-to-business calls.

The introduction of the DNCR will have affected the number of calls that need to be washed each year. Access Economics will conduct further research into the volume and value of telemarketing sales calls each year in Australia, and the proportion of these calls that are for business-to-residential and the proportion that are business-to-business. The results of this research will be presented in the final report.

4 The effect of extending the Do Not Call Register

An extension of the Do Not Call Register (DNCR) that enables businesses to opt out of receiving unsolicited telemarketing calls will impact not only upon businesses that engage in telemarketing, but also the wider economy.

For those businesses that choose to list their number on the register, they will benefit from reduced costs as they no longer have to answer unwanted calls. However, the proposed changes will increase compliance and efficiency costs for businesses that engage in both formal and informal business-to-business telemarketing. Significantly, these costs will have flow-on economic impacts on competition and innovation, especially since new entrants have used telemarketing as a means of entering markets.

4.1 Costs to business of unwanted calls

The current DNCR allows numbers used primarily for residential purposes to be placed on the DNCR. Households who place their number on the DNCR can benefit because they can already purchase many of the products offered by telemarketers at online or physical retail stores.

The extension of the DNCR will allow businesses to register if they consider that the potential opportunities offered by telemarketers do not outweigh the cost of having to answer unwanted calls.

It is not clear that providing the option for businesses to place their number on the DNCR will have as many benefits as providing the option of the DNCR for households, because products aimed at businesses are not always available through online or physical stores. The benefits that will accrue to those businesses that choose to register will be at least partially offset by their being exposed to fewer product offerings for goods and services. This may be especially important for new products in areas that are not seen as core to the business but could nevertheless provide sizeable commercial benefits if the business knew of the opportunity.

In addition, through the stakeholder consultation and anecdotally, it appears that the cost to business of unwanted calls is small, but that the cost is proportionately higher for smaller business than it is for larger business. For larger business, it is more likely that there is a person dedicated to answering the telephones, while for smaller businesses it is more likely that the person answering the telephone has a more senior role in the business. Access Economics is investigating ways to estimate the cost of unwanted telephone calls. The final report will include the results of this investigation.

A possible way of estimating the costs to business of unwanted calls is:

(Number of calls to business each year) x (1 – hit rate) x (average length of unsuccessful call) x (average wage of person answering the phone).

However, the type of estimation will depend on the data that are available.

4.2 Compliance costs

The proposed extension of the DNCR will result in increased compliance costs to business.

1. Businesses that were previously exempt from the DNCR legislation (i.e. engage in business-to-business telemarketing only) will need to **establish compliance systems**.
2. Businesses that are already subject to the DNCR legislation (i.e. engage in both business-to-business and business-to-residential telemarketing) will need to **expand their compliance systems**.
3. In addition to the costs of establishing or expanding compliance systems, businesses will also incur **ongoing compliance costs**.

The cost burden to business will also vary depending on the type of business (e.g. business size, business model, etc). For example, small businesses will be more heavily impacted due to their smaller economies of scale.

As detailed in Appendix A, the key compliance requirement under the DNCR Act is the washing of calling lists. Businesses are able to submit their calling lists to the Australian Communications and Media Authority's (ACMA) register operator for washing, to protect against the possibility of calling a registered number. A washed list identifies which numbers are registered (and cannot be called) and is valid for a 30 day period, which means lists must be re-washed on a periodic basis. The subscription fees for list washing range from $0 per year for up to 500 numbers to be checked to $88,000 per year for up to 100 million numbers to be checked.

Extensive record-keeping, including the documentation of all washing procedures and the maintenance of internal 'opt out' lists, is also required under the ACMA's 'best practice' guidelines. The guidelines state that good record-keeping practices will enable businesses to deal more effectively with complaints and reduce the likelihood of a formal investigation.

The significant costs to business will be the cost of establishing a compliance system and ongoing compliance costs in the form of labour costs. Subscription fees for washing appear to be only a very small part of the total compliance costs.

The cost of establishing a compliance system will vary depending on the size and nature of the business. For large businesses, this cost may include establishing an interface with the register operator to wash lists, aligning internal IT systems and business processes and training staff on the new compliance process. Anecdotal evidence obtained through stakeholder consultation revealed that the cost to establish a comprehensive IT compliance system could range from $50,000 for a medium size business to $2 million for a large business.

For small businesses, establishing a compliance system may simply involve setting up an administration account with the register operator and ensuring appropriate records are kept. However, small businesses will be more heavily impacted due to their smaller economies of scale.

Expansion of compliance systems for businesses that already subject to the DNCR Act will also impose costs, as internal systems and processes will need to be aligned to the new requirements.

Ongoing compliance costs largely consist of labour costs which arise through list washing and record-keeping requirements. Anecdotal evidence obtained through stakeholder consultation revealed that one business, for example, employs eight data entry operators in India to enter lead generated names and numbers in preparation for washing.

The business-to-business exemption under the proposed amendments may also impose further ongoing compliance costs on business. Prior to making a telemarketing call, staff would need to ascertain the nature of the recipient business to determine whether the content of the call is 'significantly related' to its 'core activity' and this would involve additional labour costs.

Estimates of compliance costs may be included in the final report where these data are available.

4.3 Efficiency costs

An extension of the DNCR that enables businesses to place themselves on the register and opt out of receiving unsolicited telemarketing calls will also result in increased efficiency costs to businesses that engage in any degree of business-to-business telemarketing.

Efficiency costs arise where the cost effectiveness of an activity decreases due to an externally-imposed change e.g. through regulation, especially where the activity (e.g. telemarketing) is an essential part of the business model and substitute activities (e.g. direct mail marketing) are often ineffective. The extension of the DNCR is therefore likely to result in increased efficiency costs to businesses that currently engage in business-to-business telemarketing, where it can be demonstrated that the cost effectiveness of telemarketing decreases due to the extension of the register.

Cost effectiveness of telemarketing

Telemarketing is the most cost effective means of direct marketing for some businesses. In comparison to other direct marketing channels such as fax marketing, advertising mail and other print media such as catalogues, television and radio, the internet and personal (door-to-door) marketing, telemarketing involves relatively low labour and capital costs.

Telemarketing is especially efficient for those businesses that do not have an existing relationship with a potential customer or a strong brand or network to leverage off. The rapid growth of the telemarketing industry and the existence of businesses that solely engage in telemarketing also reveal that this particular form of direct marketing is considered to be cost effective.

Evidence obtained through stakeholder consultation indicated that telemarketing is cost effective because a high volume of potential consumers can be reached. It also involves personal interaction which increases the success rate. In addition, telemarketing is proactive which means that a business does not have to rely on a consumer to take the initiative to respond, compared to other forms of direct marketing.

Ineffectiveness of other forms of direct marketing

A stakeholder consultation with direct marketing businesses revealed that telemarketing is considered the only cost effective method of selling for some businesses.

In fact, one business stated that 'no other type of selling works'. They gave the example of a marketing campaign where members had to ring the business to buy a discounted membership. From a target market of 100,000, only one successful sale was made.

The same business has also tried press and television advertising with no success. A half-hour promotion slot on a morning television show, asking viewers to call in and receive a discount on the usual price of membership, cost the business $50,000 yet only six sales were generated.

Blended campaigns are favoured by the direct marketing industry, whereby a consumer may initially be sent a direct marketing piece via mail, which is followed up by an email and finally the consumer is contacted via phone. This telemarketing call is considered essential to the success of the campaign and is a further indication of the cost effectiveness of telemarketing. In fact, stakeholders indicated that other direct marketing channels are often ineffective, in terms of negligible success rates, without the use of telemarketing.

A study from the United Kingdom on the effectiveness and cost effectiveness of different marketing strategies for the dissemination of a program to general practitioners (GPs) also found that although personal (face-to-face) marketing was the most effective overall strategy, telemarketing was the most cost effective strategy (Lock et al, 1999). The study showed that although personal marketing was the most effective marketing strategy to persuade GPs to take up and consider using the program, the high travel and labour costs associated with this strategy resulted in telemarketing being a much more cost effective option. Cost per GP for dissemination of the program was almost seven times cheaper in the telemarketing group compared with the personal marketing group (Lock et al, 1999: 697).

Data on the cost effectiveness of telemarketing will be gathered for inclusion in the final report. Access Economics expects that this data will confirm the theoretical and anecdotal evidence that telemarketing is cost effective. Large businesses should be able to supply data on the average cost of an additional unit of revenue for each marketing channel whereas smaller businesses will have data on cost per acquisition and hit rates. To gather this data, Access Economics intends to survey ADMA members and hold follow-up consultations where necessary.

Impact of an extension to the DNCR

An extension of the DNCR that allows businesses to place themselves on the register and opt out of receiving unsolicited telemarketing calls will reduce the cost effectiveness of telemarketing in two key ways:

1. The cost of telemarketing will rise due to increased compliance costs.
2. Potential revenue will be reduced to the extent that the size of the potential market is reduced.

If businesses are able to place their numbers on the register, compliance costs for businesses that engage in business-to-business telemarketing will increase (as discussed in Section 4.2). Many businesses rely on business-to-business telemarketing to promote their good or service so the impact will extend further than businesses whose core function is to conduct telemarketing. The extensive compliance requirements will increase the cost of conducting any telemarketing activity and therefore reduce its cost effectiveness as a means of direct marketing.

Potential revenue generated through telemarketing activity may also be reduced due to a decrease in the addressable market. This loss of potential revenue will decrease the cost effectiveness of telemarketing as it will be more difficult to meet return on investment criteria.

It has been suggested that businesses that list their numbers on the DNCR are not likely to be responsive to telemarketing anyway, so the existence of the DNCR helps to focus telemarketing campaigns (see for example, ACMA 2009b). It is suggested that telemarketers are helped by avoiding 'wasted' calls to customers who are not likely to be receptive to telemarketing.

However, Access Economics considers that households and business who make the decision to place a number on the DNCR do so with 'incomplete information' about the potential opportunities they are foregoing. It would be difficult for households and business to be aware of all the possible opportunities that telemarketers may offer currently and in the future – especially opportunities to buy new innovative products that do not even exist at the time their numbers are placed on the DNCR – and they may not be able to find these opportunities and products on their own without telemarketing. Therefore, it is possible the extension of the DNCR will reduce the size of the potential market for telemarketers.

In summary, the decreasing cost effectiveness of telemarketing due to an extension of the DNCR will lead to increased efficiency costs for business. This is particularly the case because other direct marketing activities are considered ineffective and would be more costly than telemarketing (even where the cost effectiveness of telemarketing decreases). Some businesses will be forced to continue to use telemarketing, which will have significant impacts on business performance and viability.

4.4 Impact on competition and innovation

The extension of the DNCR can have an adverse impact on competition by raising the cost of contacting rival firms' customers. Any policy that limits the ability to 'steal' customers from other firms will reduce incentives for firms to 'guard' their customers through price and quality. Therefore, the extension of the DNCR can reduce competition between firms leading to higher prices, lower quality and less innovation.

It is expected that in some industries, such as telecommunications, a large proportion of customers who switch firms do so in response to telephone solicitations. Access Economics is gathering information about customer switching and will present the results in the final report.

The proposed extension of the DNCR will affect the ability of both existing firms in markets as well as new entrants to markets to contact the customers of rival firms. However, new entrants to markets will be especially affected because it provides an advantage to existing firms in markets. The proposed extension will allow incumbent firms to call to their existing customers, while firms entering the market can only call businesses not on the DNCR. As a result, new entrants will find it more difficult to enter markets.

The effect on new entrants is important because new entrants to markets who have relied on telemarketing as cost effective means of entering a market have brought a raft of innovative products with competitive pricing. Limiting their ability to cost effectively market their products will decrease the incentive and ability of firms to enter markets, and will reduce the innovations and competitive pricing that these firms bring.

New entrants bringing competition and innovation in banking

New entrants in the credit and debit card market – firms such as GE Money, Virgin Money, Bankwest, HSBC and Citibank – have cited the use of direct marketing, including telemarketing, as a cost effective way of entering the credit and debit card market (Access Economics, 2009).

The entry of these firms have increased the competitiveness of the credit and debit card market, with the credit market share of the major four banks decreasing from 81% in 2002 to 68% in 2007 (Datamonitor, 2008).

In addition these new entrants have brought products that have been innovative and competitively priced, including low interest rate credit cards. For example, Bankwest entered the credit card market in 2005 with the first 'zero' interest rate card, 'Zero MasterCard' – that offered zero interest rates for the first four months followed by an interest rate of 12.99%.

5 Preliminary conclusions

The current Do Not Call Register (DNCR) allows households to opt out of receiving unsolicited telemarketing calls. This addresses legitimate privacy and nuisance concerns held by individuals and may make economic sense because there are alternative ways for individuals to access goods and services they may wish to consume, for example through retail stores.

Some of these productivity concerns are also relevant for business, but any extension of the DNCR to allow businesses to list their numbers on the register and no longer receive unsolicited telemarketing calls needs to recognise the significant costs involved. These costs include compliance costs and efficiency costs that arise through a reduction in the cost effectiveness of telemarketing. Competition and innovation in the wider economy will also be adversely affected.

Access Economics' preliminary assessment is that an extension of the DNCR to allow all business numbers to be listed overall will be detrimental to economic efficiency:

- The benefits that will accrue to those businesses that choose to register will be at least partially offset by their being exposed to fewer product offerings for goods and services. This may be especially important for new products in areas that are not seen as core to the business but could nevertheless provide sizeable commercial benefits if the business knew of the opportunity.
- The costs of complying with the proposed DNCR will vary across industry but will be sizeable. The largest costs are likely to involve internal processes rather than fees for the washing of lists. (Access Economics understands that many businesses are unlikely to realise that their current marketing activities will be affected by the proposed scheme. The increased compliance costs will not simply affect the main telemarketing companies but rather will affect large numbers of businesses of all sizes.)
- Perhaps the largest impact on economic efficiency will flow through the effect on competition and innovation in the marketplace.

The final report will provide a more detailed analysis that incorporates data to estimate the economic impacts of an extension of the DNCR. As such, the final report will provide firmer conclusions than this preliminary report.

Access Economics

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Appendix A: Do Not Call Register Act compliance requirements

This appendix provides further detail on the compliance requirements under the DNCR Act.

Compliance under the DNCR Act

The Australian Communications and Media Authority (ACMA) is the regulatory body that has operational oversight of the DNCR and also has responsibility for monitoring compliance with the DNCR Act. The key compliance requirement of the DNCR Act, outlined in section 11, is that unsolicited telemarketing calls must not be made to a number listed on the DNCR.

The central compliance mechanism under the DNCR Act is washing of calling lists[4]. Businesses are able to submit their calling lists to the ACMA register operator for washing, to protect against the possibility of calling a registered number. A washed list identifies which numbers are registered (and cannot be called) and is valid for a 30 day period. To ensure ongoing compliance, calling lists must be re-washed on a periodic basis, which requires businesses to monitor when the validity period of a washed list is about to lapse.

In order to submit calling lists to the register operator, a business must set up an administration account and select a subscription type (an annual subscription fee must be paid). Details for each subscription type, including fees, are outlined in Table A.1 below.

Table A.1: Subscription fees for list washing under the Do Not Call Register

Subscription type	Maximum number of telephone numbers able to be submitted for checking during a subscription period	Annual subscription fee
A	500	$ 0
B	20,000	$ 78
C	100,000	$360
D	1,000,000	$3,100
E	10,000,000	$26,400
F	20,000,000	$44,000
G	50,000,000	$66,000
H	100,000,000	$88,000

Source: www.donotcall.gov.au/dncrtelem/sub_oview.cfm

Contact lists must be submitted in a specific format via the following methods:

- uploading via the DNCR website;
- using the Automated Washing Service (Secure File Transfer Protocol);
- CD-ROM sent by certified mail to the register operator; or

[4] Sections 11(3) and 19 of the DNCR Act operate in tandem and provide protection, under certain conditions, to a person who has submitted a list of numbers to ACMA for washing.

- using the Quick Check option on the DNCR website (this option allows someone to immediately check up to 10 telephone numbers at a time).

According to ACMA, the washing will generally take a few minutes, depending on the size of the contact list, the load on the register operator's system at the time and the nominated format of the returned washed list. Larger lists will take slightly longer to wash.

Section 12 of the DNCR Act also states that telemarketing agreements, where a person undertakes to make telemarketing calls or have any of their employees or agents make telemarketing calls, must comply with the Act. This means that the agreement must include every provision necessary to ensure compliance and that contracted parties should provide compliance reports regularly during the course of the agreement.

ACMA recommendations

Although the DNCR Act outlines the key compliance requirements, ACMA has also issued a compliance guide that provides 'best practice' guidance for telemarketers (ACMA, 2009b). The recommendations outlined by ACMA are not compulsory, however ACMA states that implementation of these compliance arrangements will help telemarketers ensure that they have thorough and effective compliance systems, therefore minimising potential breaches under the DNCR Act.

ACMA recommends that businesses document their washing procedures. ACMA states that businesses should keep washing receipts provided by the register operator for each washed list as well as copies of all files submitted for washing and all files as returned by the register operator, for a period of at least twelve months. ACMA also recommends that businesses document the steps taken, for example through a washing procedures document, to ensure that registered numbers are not called unlawfully and that unregistered numbers are not called outside the 30 day validity period.

The importance of keeping comprehensive records is emphasised by ACMA. They indicate that good record-keeping will help ensure that any complaints can be resolved promptly and will reduce the likelihood of a formal investigation. ACMA recommends that the following records be kept for a period of at least twelve months from the date on which calls were made or attempted:

- details about each telemarketing call made or attempted;
- details about campaigns, including details of the goods or services marketed and the contact details of all parties involved in making the calls;
- details about washing activity;
- details about consent, either express or inferred;
- details about 'opt out' requests made directly to a business; and
- details about complaints received.

The maintenance of internal 'opt out' lists is another compliance mechanism that ACMA encourages. An 'opt out' list records all the numbers of consumers that have advised a business that they do not wished to be called again. ACMA recommends that businesses should wash their calling lists against both the DNCR and their internal 'opt out' list, as a means of ensuring that a consumer is not called after they have withdrawn their consent.

A business that uses a pre-washed list from an external source to make telemarketing calls is not exempt from the compliance requirements. Under the DNCR Act, liability for a call made to a registered number rests with the person who made the call or caused the call to be made, rather than the person who supplied the calling list. Where a registered number is called even though it appears on a washed list, the only person that receives protection under the DNCR Act is the person who washed the list. A business that uses a pre-washed list from another person will not receive this protection.

ACMA therefore recommends that all calling lists should be washed by the person who wants to call the numbers, even where lists are identified as 'pre-washed'. At a minimum, ACMA recommends that businesses enter into comprehensive written agreements with list suppliers that require an undertaking from the supplier that the lists have been washed against the register and that the supplier will supply washing receipts as proof that washing has been done.

Non-compliance

ACMA has the power to investigate alleged breaches and can impose a range of enforcement options including formal warnings, enforceable undertakings, infringement notices and court action. Under an infringement notice, the maximum penalty that can be imposed is $110,000 for each day on which contraventions occurred. The maximum penalty that can be imposed by the Federal Court is $1.1 million for each day on which contraventions occurred.