

National Do Not Call register to end nuisance calls

A national, legislated Do Not Call register is to be created to protect consumers from nuisance telemarketing phone calls. The Minister for Communications, Information Technology and the Arts, Senator Helen Coonan, announced the initiative in April 2006.

The number of unsolicited calls in Australia has grown significantly in recent years, and has led to rising community concerns about the inconvenience and intrusiveness of telemarketing.

A Do Not Call register, open to individuals and small businesses, will enable people to opt out from receiving unsolicited telemarketing calls. Once a telephone number is registered, it will be prohibited for telemarketers to contact that number.

Following the minister's release of a discussion paper in October 2005 on a Do Not Call register, more than 90 per cent of the 495 submissions received supported its creation. Legislation is now being prepared to establish the register and set minimum standards for the behaviour of telemarketers. The Bill will be introduced into the Parliament in the near future.

Based on international experience, a million registrations can be expected in the first week of operation of the register and around four million in the first year. It will apply to all telemarketers operating in Australia, as well as overseas telemarketers that represent Australian companies. Enforcement options will include warnings, fines, formal directions and financial penalties.

National minimum contact standards for telemarketers will cover permitted calling hours, minimum information requirements and termination of calls. These standards will apply to all telemarketers, including specified public interest bodies exempted from the Do Not Call register arrangements.

Exemptions will cover, for example, charity groups and people undertaking social research, in recognition of the public interest objectives certain types of unsolicited calls. Political parties may also be granted exemptions. Exemptions may also apply where the company has an existing business relationship with an individual.

Telemarketers will contribute to the costs of running the scheme through the payment of subscription fees to access it. There will be no fee for individuals and small businesses placing their telephone numbers on the Do Not Call register.

ACMA will administer the register, which is expected to be up and running in 2007, and is drafting an implementation plan for its introduction.



Federal Court makes decision on Clarity1 spam case

ACMA has welcomed the recent decision in the Federal Court in Perth by Justice Nicholson about contraventions of the *Spam Act 2003* by Clarity1 Pty Ltd of Perth and its managing director Wayne Mansfield. The prosecution of Clarity1 is the first by ACMA under the Spam Act.

Among other matters, ACMA submitted to the Federal Court that, in the twelve months after the Spam Act commenced in April 2004, Clarity1 Pty Ltd and Mr Mansfield sent out at least 56 million commercial emails, with most of the messages being unsolicited and in breach of the Spam Act.

Justice Nicholson rejected the company's defence that the recipients of emails had consented to receive them. He further rejected the defence that the company could use harvested lists acquired before the Spam Act commenced to send spam emails at any time. He said that the fact that address-harvesting may have occurred at a time when no such prohibition was in the law, does not prevent the application of the provision in its term from the date it came into force.

The receipt of spam imposes significant cost and inconvenience on individuals and businesses by disrupting email delivery, clogging up computer systems, reducing productivity, wasting time, irritating users and raising the cost of internet access fees.

ACMA Chairman Chris Chapman said that it had been an important test case for the Spam Act and Justice Nicholson's findings should give Australians confidence in the effectiveness of this important legislation. He added that this case also provides a strong indication to Australian spammers that their activities will be vigorously pursued by ACMA.

The Federal Court advised that the determination of penalties will be made at a later date.