



Infringement Notice

Do Not Call Register Act 2006

I, Jeremy Fenton, an authorised officer for the purposes of Schedule 3 to the *Do Not Call Register Act 2006* (the Act), having reasonable grounds to believe that Wyndham Destinations Asia Pacific Pty Ltd ACN 090083613 (Wyndham Destinations A/P) has committed one or more contraventions of a particular civil penalty provision,

HEREBY give an infringement notice (the Notice) under subclause 2(1) of Schedule 3 to the Act to:

Wyndham Destinations Asia Pacific Pty Ltd

at

Wyndham Corporate Centre
Level 7, 1 Corporate Court
BUNDALL QLD 4217

Details of Alleged Contraventions of Civil Penalty Provision

It is alleged that Wyndham Destinations A/P contravened subsection 11(1) of the Act between 11 January 2019 and 11 June 2019, by making 26 telemarketing calls to Australian numbers registered on the Do Not Call Register (the Register), for more than 30 days at the time of the alleged call, without the consent of the relevant account-holder, and where the calls were not designated telemarketing calls.

Schedule 1 to this Notice sets out brief details of the alleged contraventions of the civil penalty provision.

Amount of Penalty

The total pecuniary penalty (the penalty) for the alleged contraventions of civil penalty provisions is \$109,200. The penalty is calculated in accordance with subclause 4(1) of Schedule 3 to the Act.

Payment of Penalty

The penalty should be paid to the Australian Communications and Media Authority (ACMA), on behalf of the Commonwealth, by deposit into the following account within 28 days of receipt of the Notice. Please include the narration "Wyndham - UCES" with your payment:

[REDACTED]

If the penalty is paid to the ACMA, on behalf of the Commonwealth, within 28 days after the Notice is given to Wyndham Destinations A/P, this matter will not be dealt with by the Federal Court of Australia and any liability for the contraventions that are the subject of this notice is discharged.

DATE: 20 December 2019

[REDACTED]

Jeremy Fenton
Executive Manager
Consumer, Consent and Numbers Branch
Australian Communications and Media Authority

SCHEDULE 1

DETAILS OF CONTRAVENTIONS OF CIVIL PENALTY PROVISION

In accordance with clause 3 of Schedule 3 to the Act, brief details of each of the civil contraventions are set out below.

1. Background

- 1.1. Wyndham Destinations A/P is a company registered under the *Corporations Act 2001*, with a registered office at Wyndham Corporate Centre, Level 7, 1 Corporate Court, Bundall QLD 4217.
- 1.2. On 30 April 2019, the ACMA commenced an investigation into whether Wyndham Destinations A/P had contravened the DNCR Act.
- 1.3. Before commencing the investigation, the ACMA had received complaints from consumers claiming that telemarketing calls promoting Wyndham Destinations A/P services had been made to numbers on the Register.

2. Matters giving rise to the Notice

- 2.1. Information provided by Wyndham Destinations A/P showed that, between 11 January 2019 and 11 June 2019, Wyndham Destinations A/P made telephone calls to Australian numbers (as defined in section 4 of the Act).
- 2.2. Information provided by Wyndham Destinations A/P indicated that the purpose of the calls referred to in paragraph 2.1 was to offer to supply, or to advertise or promote, its goods or services. Therefore, the calls described at paragraph 2.1 were 'telemarketing calls', as defined in section 5 of the Act.
- 2.3. The calls were not authorised by a government body, charity, political party or independent member of parliament or candidate in an election for parliament or an educational institution, and accordingly, were not 'designated' exempt telemarketing calls as described in Schedule 1 to the Do Not Call Register Act.
- 2.4. The numbers set out at Schedule 2 to this Notice were registered on the Register for more than 30 days at the time that each of these calls were made.
- 2.5. Wyndham Destinations A/P could not provide evidence of consent to make the calls to the numbers set out at Schedule 2 to this Notice.
- 2.6. Information provided by Wyndham Destinations A/P indicates that it failed to adequately ensure that it could provide evidence of the consent it relied upon where specific third-parties were involved in the obtaining of that consent.

3. Relevant civil penalty provision of the Act

- 3.1. Subsection 11(1) of the Act provides that a person must not make a telemarketing call to an Australian number if the number is registered on the Register and the call is not a designated telemarketing call.
- 3.2. Subsection 11(2) provides that subsection 11(1) does not apply if the relevant account-holder or a nominee consented to the making of the call.
- 3.3. Wyndham Destinations A/P did not provide evidence to demonstrate it had consent to make the calls set out at Schedule 2 to this Notice. Therefore, these calls were made without the consent of the relevant account-holder.
- 3.4. Accordingly, there are reasonable grounds to believe that Wyndham Destinations A/P contravened subsection 11(1) of the Do Not Call Register Act on 26 occasions between 11 January 2019 and 11 June 2019, as set out at Schedule 2 to this Notice.
- 3.5. Section 11(1) of the Act is a civil penalty provision, as per subsection 11(8) of the Act.