

**ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND
MEDIA AUTHORITY BY MARKETSOLVE PTY LTD (ACN: 78 160 932 525) UNDER
SECTION 572B OF THE *TELECOMMUNICATIONS ACT 1997***

1 Definitions

1.1. In this Undertaking:

- 1.1.1. **ACMA** means the Australian Communications and Media Authority.
- 1.1.2. **Commencement date** has the meaning given to it in clause 2.1.
- 1.1.3. **Do Not Call Register Act** means the *Do Not Call Register Act 2006*.
- 1.1.4. **Independent consultant** means a qualified and independent consultant with expertise in audits relating to risk and compliance, processes, procedures, systems, governance, and controls.
- 1.1.5. **Marketsolve** means Marketsolve Pty Ltd (ACN: 78 160 932 525).
- 1.1.6. **Report** means the report produced by the independent consultant referred to in clause 6.1.
- 1.1.7. **Telecommunications Act** means the *Telecommunications Act 1997*.
- 1.1.8. **Telemarketing** has the same meaning as in the *Do Not Call Register Act 2006*.
- 1.1.9. **Telemarketing complaint** means a complaint to Marketsolve that relates to a telemarketing call made, or alleged to have been made, by Marketsolve and includes complaints notified to Marketsolve by the ACMA.

2 Term of the undertakings

2.1. This Undertaking commences when:

- 2.1.1. it has been executed by Marketsolve
- 2.1.2. so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to Marketsolve (**Commencement date**).

2.2. This Undertaking continues for a period of 24 months from the Commencement date or until it is withdrawn by Marketsolve, with the approval of the ACMA, pursuant to section 572B of the Telecommunications Act, whichever is earlier.

2.3. This Undertaking may be varied by Marketsolve, with the consent of the ACMA, pursuant to section 572B of the Telecommunications Act.

3 Background

- 3.1. On 5 October 2021, the ACMA informed Marketsolve that the ACMA had received complaints from consumers alleging Marketsolve had contravened the Do No Call Register Act and the Telemarketing Industry Standard.
- 3.2. Marketsolve acknowledges that its systems, processes, and practices were not adequate to protect against calling numbers on the Do Not Call Register.
- 3.3. Having regard to the ACMA's concerns regarding Marketsolve's compliance with the Do Not Call Register Act and Telemarketing Industry Standard, Marketsolve offers this Undertaking to the ACMA.

4 Undertaking

- 4.1. Marketsolve undertakes to take the following specified actions to ensure the company complies with the Do Not Call Register Act and the Telemarketing Industry Standard and does not contravene this legislation in future.

5 Remedial Action Already Taken

- 5.1 Marketsolve would like the ACMA to recognise remedial action it has taken prior to offering this undertaking due to the identification of some key inadequacies in the entity's processes, namely, that calls were made to numbers on the Do Not Call Register due to a third-party list supplier omitting to wash two supplied lists against the Do Not Call Register when it was advised that this was done. As such, the following processes have already been introduced:
 - 5.1.1 In the instance that a telemarketing list is purchased from a third-party list supplier, or a third-party is instructed to perform a wash of a list against the Do Not Call Register, Marketsolve will request a Do Not Call Register wash receipt to be supplied and filed prior to calling numbers
 - 5.1.2 Prior to the uploading of lists into Marketsolve's dialler, a spot check of 5 numbers picked randomly from within the list will be checked using the Do Not Call Register "Quick Check" function in an effort to avoid the inadvertent uploading of a list not washed against the Do Not Call Register
 - 5.1.3 Marketsolve has conducted training to all staff making calls on how to deal with call recipients when they advise that they are on the Do Not Call Register, specifically that they are not to make misleading statements such as that there is a requirement to re-register their numbers on the Do Not Call Register
 - 5.1.4 Marketsolve will continue to conduct training on how to deal with call recipients when they ask to have the call terminated, indicate that they are not interested and/or ask to be removed from our database.
- 5.2 Marketsolve acknowledges that while the above remedial action has been taken, an independent review of these actions and compliance systems and practices will still need to be conducted by an independent consultant.

6 Independent Consultant

- 6.1. Marketsolve undertakes to appoint an independent consultant to:
 - 6.1.1. review Marketsolve current procedures, policies, training, and systems relating to its compliance with the Do Not Call Register Act and the Telemarketing Industry Standard to identify any deficiencies and/or improvements to ensure that Marketsolve:
 - a. does not make, or cause calls to be made to numbers on the Do Not call Register unless this is done in compliance with the Do Not Call Register Act
 - b. has robust procedures and systems for checking numbers to be called against the Do Not Call Register (if applicable)
 - c. does not make telemarketing calls unless this is done in compliance with the Telemarketing Industry Standard
 - d. has appropriate internal auditing procedures in place for outbound calls
 - e. classifies and analyses its records of telemarketing complaints to

identify systemic and recurring problems and trends (**systemic problems**).

6.1.2. produce a report (the report) making recommendations as to:

- a. improvements to policies, procedures and systems to ensure compliance with the Do Not Call Register Act and the Telemarketing Industry Standard, including but not limited to:
 - i. quality assurance procedures for ensuring the ongoing integrity and functionality of relevant systems
 - ii. procedures for ensuring Marketsolve personnel comply with compliance policies and procedures
 - iii. procedures for ensuring continued compliance when process or system changes are implemented
- b. ongoing training for Marketsolve personnel on compliance with the Do Not Call Register Act and the Telemarketing Industry Standard
- c. ongoing monitoring of compliance measures for the Do Not Call Register Act and the Telemarketing Industry Standard
- d. ensuring Marketsolve takes reasonable steps to address any identified systemic problems.

6.2. Marketsolve undertakes to seek written approval from the ACMA for the appointment of the proposed independent consultant within 20 business days after commencement of these undertakings. If the ACMA does not approve the choice of independent consultant, Marketsolve will repeat this process until it has the ACMA's written approval.

6.3. Marketsolve undertakes to appoint the independent consultant, and to provide written notification of that appointment to the ACMA, within 10 business days after the ACMA has given its written approval.

6.4. The independent consultant will provide the report to Marketsolve, and at the same time to the ACMA, within 4 months of their appointment.

6.5. Subject to the ACMA's written agreement, Marketsolve may remove the independent consultant at any time and replace the independent consultant with a new independent consultant approved by ACMA. If the ACMA does not approve the choice of independent consultant, Marketsolve will repeat this process until it has the ACMA's approval.

7 Implementation Plan, Audit & Reporting

7.1. Within 40 business days of receiving the report, Marketsolve will:

- 7.1.1. develop an implementation plan setting out the steps Marketsolve has taken, or will take, to implement all recommendations made by the independent consultant in the report, including timeframes (unless the ACMA specifically agrees that any recommendation need not be implemented)
- 7.1.2. provide a copy of the implementation plan to the ACMA.

7.2. Marketsolve undertakes to comply with the approved implementation plan in accordance with the timeframes specified within.

7.3. The implementation plan may be modified at any time subject to the ACMA's written approval.

- 7.4. Every 12 months from the date the approved implementation plan is provided to the ACMA, Marketsolve will provide a compliance report, to the ACMA that covers the previous 12 months that includes:
- 7.4.1. the status of actions it will take under the implementation plan
 - 7.4.2. a report of all de-identified consumer complaints made to Marketsolve about alleged non-compliance with the Do Not Call Register Act and the Telemarketing Industry Standard, including the date of the complaint and a unique identifier for each complaint
 - 7.4.3. action Marketsolve has taken on all complaints the ACMA has notified Marketsolve about or received by Marketsolve directly from consumers.
- 7.5. Marketsolve will report to the ACMA all identified instances of non-compliance with the Do Not Call Register Act and the Telemarketing Industry Standard within 15 business days of identifying an instance of non-compliance, including the cause of any identified compliance issues and remediation action taken or proposed to be taken, with applicable dates.

8 Training

- 8.1. Within 30 business days of the commencement date, Marketsolve undertakes to train all personnel that may be, or are currently responsible for making, or causing the making of, telemarketing calls, and their direct line manager, to ensure compliance with the Do Not Call Register Act and the Telemarketing Industry Standard.
- 8.2. Marketsolve undertakes to repeat the training, described in clause 8.1, every 12 months after Marketsolve Pty Ltd has undertaken the training referred to in clause 8.1 for the term of this undertaking.
- 8.3. Marketsolve undertakes to provide the ACMA with written notice when it has undertaken training referred to in clauses 8.1 and 8.2.

9 Record-keeping

- 9.1. Marketsolve undertakes to, while this Undertaking is in force, keep accurate records of:
- 9.1.1. all telemarketing calls made, or caused to be made, by Marketsolve, including the time, date and telephone number called
 - 9.1.2. the consent applicable to all telemarketing calls at clause 9.1.1 (above), including the terms and conditions associated with that consent (if applicable)
 - 9.1.3. all telemarketing complaints
 - 9.1.4. Do Not Call Register washing receipts, either obtained by itself or by any third-party supplier.
- 9.2. Marketsolve will provide copies of records referred to in this clause 9 to the ACMA upon request by the ACMA.

10 Acknowledgements

- 10.1. Marketsolve acknowledges that:
- 10.1.1. The ACMA will make this Undertaking publicly available including by publishing it on the ACMA's website.

10.1.2. The ACMA may, from time to time, make public comment about this Undertaking and its terms which includes issuing a media release upon its execution by the ACMA.

10.1.3. The ACMA may, from time to time, publicly report on compliance with this Undertaking.

10.2. Marketsolve also acknowledges that:

10.2.1. The ACMA's acceptance of this Undertaking does not affect the ACMA's power to investigate and take compliance and enforcement action arising from conduct that is not the subject of this Undertaking or arising from future conduct.

This Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from the alleged conduct, the subject of this Undertaking.

Date given by Marketsolve Pty Ltd 16 / 11 / 2021

Name and position of Marketsolve Pty Ltd representative authorised to give this Undertaking

[Redacted]

Signature of Marketsolve Pty Ltd representative authorised to give this Undertaking

[Redacted signature]

Witness

[Redacted witness signature]

The undertaking offered by Marketsolve Pty Ltd is accepted by the Australian Communications and Media Authority (ACMA) pursuant to section 572B of the *Telecommunications Act* by its delegate

Date accepted by ACMA 24/ 11 / 2021

Name and position of ACMA delegate

Jeremy Fenton, Executive Manager

Signature of ACMA delegate

[Redacted signature]