



Telemarketing and Research Industry Standard 2007

as amended

made under subsection 125A (1) of the

Telecommunications Act 1997

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taking into account amendments up to *Telecommunications and Research Calls
Industry Standard Variation 2011 (No. 1)*

Prepared by the Australian Communications and Media Authority

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1 Name of industry standard [see Note 1]

This industry standard is the *Telemarketing and Research Industry Standard 2007*.

2 Commencement [see Note 1]

This industry standard commences at the same time as Part 2 of the *Do Not Call Register Act 2006* commences.

3 Interpretation

(1) In this industry standard:

ACMA means the Australian Communications and Media Authority.

Act means the *Telecommunications Act 1997*.

Australian number has the meaning given by section 4 of the *Do Not Call Register Act 2006*.

call means a telemarketing call.

caller means a participant in a section of the telemarketing industry that makes, or proposes to make, a call.

calling line identification means a facility in telecommunications networks that indicates either the telephone number from which the call was initiated or to which the call recipient may call back.

call recipient means an individual who receives a call from a caller, whether or not the call recipient is a relevant account-holder.

consent has the same meaning as in Schedule 2 to the *Do Not Call Register Act 2006*.

nominee has the meaning given by section 39 of the *Do Not Call Register Act 2006*.

relevant account-holder has the meaning given by section 4 of the *Do Not Call Register Act 2006*.

research call means a call described in paragraph (b) of the definition of **telemarketing call** in section 7 of the Act.

telemarketing call has the meaning given by section 7 of the Act.

Note Section 7 of the Act contains the following definition:

telemarketing call means:

- (a) a telemarketing call (within the meaning of the *Do Not Call Register Act 2006*) that is made to an Australian number; or
- (b) a voice call (within the meaning of the *Do Not Call Register Act 2006*) that is made to an Australian number, where, having regard to:
 - (i) the content of the call; and
 - (ii) the presentational aspects of the call;it would be concluded that the purpose, or one of the purposes, of the call is:

- (iii) to conduct opinion polling; or
- (iv) to carry out standard questionnaire-based research.

voice call has the meaning given by section 4 of the *Do Not Call Register Act 2006*.

Note The definition of voice call contained in section 4 of the *Do Not Call Register Act 2006* includes, among other things, a call that involves a recorded or synthetic voice.

- (2) In this industry standard, and in addition to any other meaning of **cause**, a person (the **first person**) is taken to have **caused** a call to be made if:
 - (a) the first person enters into a contract (other than a contract of employment) or arrangement, or arrives at an understanding, with another person; and
 - (b) under the contract, arrangement or understanding, the other person undertakes:
 - (i) to make calls ; or
 - (ii) to cause any or all of the other person's employees or agents to make calls ; and
 - (c) the other person, or an employee or agent of the other person, gives effect to the contract, arrangement or understanding by making a call.
- (3) In this industry standard, and in addition to any other meaning of **cause**, a person (the **first person**) is taken to have **caused** a call to be made if:
 - (a) the first person is the employer of another person; and
 - (b) the call is made by the other person as a call operator on behalf of the first person; and
 - (c) the call is not caused to be made by any other person mentioned in subsection (2).

4 Persons to which this industry standard applies

For section 125A of the Act, this industry standard applies to participants in each section of the telemarketing industry.

Note The content of this industry standard relates to making, attempting or proposing to make a call.

5 Prohibited calling times

Times — general

- (1) Subject to subsections (3) and (5), a caller must not make, or cause to be made, a call that is not a research call, or attempt to make such a call, on:
 - (a) a weekday before 9 am; or
 - (b) a weekday after 8 pm; or
 - (c) a Saturday before 9 am; or
 - (d) a Saturday after 5 pm; or
 - (e) a Sunday.

Note A caller may be prohibited from making a call, or attempting to make a call, at other times, in accordance with State or Territory laws: see section 9.

Times — research calls

- (2) Subject to subsections (3) and (5), a caller must not make, or cause to be made, a research call, or attempt to make a research call, on:
- (a) a weekday before 9 am; or
 - (b) a weekday after 8.30 pm; or
 - (c) a Saturday before 9 am; or
 - (d) a Saturday after 5 pm; or
 - (e) a Sunday before 9 am; or
 - (f) a Sunday after 5 pm.

Note A caller may be prohibited from making a call, or attempting to make a call, at other times, in accordance with State or Territory laws: see section 9.

- (3) Despite paragraphs (1) (a) to (d), or 2 (a) to (f) and subject to subsection (5), a caller must not make, or attempt to make a call at any time on:
- (a) a day that is any of the following national public holidays:
 - (i) New Year's Day;
 - (ii) Australia Day;
 - (iii) Good Friday;
 - (iv) Easter Monday;
 - (v) Anzac Day;
 - (vi) Christmas Day;
 - (vii) Boxing Day; or
 - (b) a holiday on a weekday given in lieu of a public holiday mentioned in paragraph (a).

Example

If Christmas Day falls on a Saturday, calls would be prohibited on the whole of Christmas Day. Calls would also be prohibited on any other day that is a public holiday in lieu of Christmas Day.

Note Callers are not prohibited from making or attempting to make calls on a State or Territory public holiday, unless the State or Territory public holiday falls on a day prohibited in paragraphs (1) and (3) and subject to the prohibited calling times in paragraphs (1) and (2).

- (4) For subsections (1), (2) and (3), a reference to a time of day, is the time of day at the place that is the usual residential address of the relevant account-holder.

Note In addition to subsections (1), (2) and (3), a caller must immediately terminate a call if the time at which the call recipient receives the call at the place at which the call recipient is located is a time to which subsection 5 (1), (2) or (3) would apply if it were that time at the usual residential address of the relevant account-holder: see paragraph 7 (1) (a) and subsection 7 (2).

Exception where consent has been given in advance

- (5) Subsections (1), (2) and (3) do not apply if:
- (a) either:
 - (i) the relevant account-holder; or
 - (ii) a nominee of the relevant account-holder;has consented in advance to receiving a call on a day or at a time referred to in those subsections; and
 - (b) the caller only makes or attempts to make the call on the day, or at the time to which the consent applies; and
 - (c) if required by the ACMA, the caller demonstrates, to the satisfaction of the ACMA, the existence of all the matters mentioned in paragraphs (a) and (b).

6 Provision of information during telemarketing calls other than research calls

Application of this section

- (1) This section applies to all telemarketing calls other than telemarketing calls that are research calls.

Information to be provided as soon as the call starts

- (2) The caller must give, or cause to be given, the following information to the call recipient as soon as the call starts:
- (a) the given name of the individual making the call;
 - (b) the purpose of the call;
 - (c) the name of the person causing the call to be made (if applicable).

Information to be provided immediately upon request

- (3) The caller must give, or cause to be given, the following information to the call recipient immediately after being asked to do so by the call recipient:
- (a) the employee or staff identifier of the individual making the call;
 - (b) the name and contact details of the employer of the individual making the call, or, if the individual calling is self-employed, their business name (if applicable) and contact details;
 - (c) the contact details of the person that caused the call to be made (if applicable);
 - (d) the name and contact details of any person responsible for dealing with inquiries or complaints about:
 - (i) the individual making the call

- (ii) the employer of the individual making the call (if applicable);
- (iii) the person who caused the call to be made (if applicable).

Information to be provided within a reasonable time (not exceeding 7 days) if requested

- (4) The caller must give, or cause to be given, if requested by the call recipient, the following information to the call recipient within a reasonable time (not exceeding 7 days) after being asked to do so:
 - (a) details of where the person calling obtained the Australian number called, or that it was obtained from a natural person;
 - (b) the name of the person the call was intended for (if applicable);
 - (c) the name and contact details of any entity that disclosed to the caller the Australian number called and/or the name of the person for whom the call was intended.

6A Provision of information during a research call

Application of this section

- (1) This section only applies to telemarketing calls that are research calls.

Information to be provided as soon as the call starts

- (2) The caller must give, or cause to be given, the following information to the call recipient as soon as the call starts:
 - (a) the given name of the individual making the call;
 - (b) the purpose of the call.

Information to be provided immediately upon request or, if not requested, before the end of the call

- (3) If the call recipient asks who caused the call to be made, the caller must give, or cause to be given, the name of the person that caused the call to be made immediately upon request.
- (4) If the call recipient does not ask who caused the call to be made, the caller must give, or cause to be given, the name of the person that caused the call to be made before the end of the call.

Information to be provided immediately upon request

- (5) The caller must give, or cause to be given, the following information to the call recipient immediately after being asked to do so by the call recipient:
- (a) the employee or staff identifier of the individual making the call;
 - (b) the name and contact details of the employer of the individual calling, or, if the individual calling is self-employed, their business name (if applicable) and contact details;
 - (c) the contact details of the person that caused the call to be made (if applicable);
 - (d) the name and contact details of any person responsible for dealing with inquiries or complaints about:
 - (i) the individual making the call;
 - (ii) the employer of the individual making the call (if applicable)
 - (iii) the person who caused the call to be made (if applicable).

Information to be provided within a reasonable time (not exceeding 7 days) if requested

- (6) If requested by the call recipient, the caller must give, or cause to be given, the following information to the call recipient within a reasonable time (not exceeding 7 days) after being asked to do so:
- (a) details of where the person calling obtained the Australian number called, or that it was obtained from a natural person;
 - (b) the name of the person the call was intended for (if applicable);
 - (c) the name and contact details of any entity that disclosed to the caller the Australian number called and/or the name of the person for whom the call was intended.

6B Contact details

For sections 6 and 6A a caller's *contact details* must include an Australian number suitable for receiving voice calls during normal business hours at the location of the call recipient, and at least one of the following:

- (a) street address;
- (b) postal or business address, other than a street address;
- (c) email address.

Note The Australian number provided can be any number suitable for receiving voice calls during the hours referred to and need not be the number of a telephone from which the caller makes telemarketing calls.

6C Calls that involve a recorded or synthetic voice

Where a caller makes, or causes to be made, a telemarketing call involving recorded or synthetic voices, the caller must ensure that a mechanism to enable the call recipient to request information listed in subsections 6(3) and (4) and subsections 6A(3), (5) and (6) is provided during the call.

Example: The call recipient may be advised of the facility to request such information by pressing a button to talk to an operator or to obtain further details about the call, the caller and/or the entity that is causing the call to be made.

7 Terminating a call

- (1) A caller must immediately terminate a call, or ensure that a call is immediately terminated, if:
 - (a) the person making the call, receives information that would lead a reasonable person to conclude that:
 - (i) the call recipient is not at the usual residential address of the relevant account-holder; and
 - (ii) the time at which the call recipient receives the call at the place at which the call recipient is located is a time to which subsection 5 (1), (2) or (3) would apply if it were that time at the usual residential address of the relevant account-holder; or
 - (b) the call recipient asks for the call to be terminated or otherwise indicates that the call recipient does not want the call to continue.

Example

If:

- (a) a call recipient receives a call on a mobile phone in a different time zone to the usual residential address of the relevant account-holder; and

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(b) the caller, or call operator, becomes aware that the day or time at which the call recipient receives the call at that location would be a prohibited day or time at the usual residential address of the relevant account-holder;

the caller must immediately terminate the call or cause the call to be terminated.

- (2) Paragraph (1) (a) does not apply if the call recipient expressly states that he or she would like the call to be continued.

8 Enabling calling line identification for a call

- (1) A caller must ensure that calling line identification is enabled at the time that the caller makes or attempts to make a call, or causes a call to be made or attempted to be made.

Example: A caller must not block the transmission of the calling line identification to any calling number display or any calling name display of a call recipient who receives the call.

- (2) Callers must make reasonable efforts to ensure that when calls are made, the number which is transmitted to the calling number display of the receiver terminals is a telephone number which is suitable for return telephone contact by a call recipient.

9 Operation of State and Territory laws

This industry standard is not intended to exclude the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this industry standard.

Example

If a law of a State or Territory prohibits a caller from making a call or causing a call to be made on a day, or at a time, other than a day or time to which subsection 5 (1), (2) or (3) applies, that law will continue to operate to that extent, and a caller to whom that law applies must not make a call on that day or at that time.

Table of Instruments

Notes to the *Telemarketing and Research Industry Standard 2007*

Note 1

The *Telemarketing and Research Industry Standard 2007* (in force under subsection 125A (1) of the *Telecommunications Act 1997*) as shown in this compilation is amended as indicated in the Tables below.

Table of Instruments

Title	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007</i>	29 Mar 2007 (see F2007L00815)	31 May 2007	—
<i>Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard Variation 2007 (No. 1)</i>	30 May 2007 (see F2007L01546)	31 May 2007 (see r. 2)	—
<i>Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard Variation 2010 (No. 1)</i>	7 Oct 2010 (see F2010L02574)	8 Oct 2010	—
<i>Telemarketing and Research Calls Industry Standard Variation 2011 (No. 1)</i>	2 Nov 2011 (see F2011L02182)	3 Nov 2011	—

Table of Amendments

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ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Name of Instrument	am. 2011 No. 1
S. 1	am. 2011 No. 1
S. 3.....	am. 2010 No. 1, am. 2011 No. 1
Note to s.4	am 2011 No.1
S. 5.....	am. 2007 No. 1; 2010 No. 1, am. 2011 No. 1
Note to s. 5 (4)	am. 2010 No. 1
Note to s. 5 (5)	rep. 2011 No. 1
S. 6.....	am. 2010 No. 1, rs. 2011 No. 1
S.6A	ad. 2011 No. 1
S.6B	ad. 2011 No. 1
S.6C	ad. 2011 No. 1
S. 7.....	am. 2010 No. 1, am. 2011 No. 1
S. 8	am. 2011 No. 1