



# **Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007**

*Telecommunications Act 1997*

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The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this industry standard under subsection 125A (1) of the *Telecommunications Act 1997*.

Dated 22 March 2007

CHRIS CHAPMAN  
Chairman

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### 1 Name of industry standard

This industry standard is the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007*.

### 2 Commencement

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:

*Act* means the *Telecommunications Act 1997*.

*call* means a telemarketing call.

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

*call operator* means an individual who, on behalf of a caller:

- (a) makes a call; or
- (b) by dialling a number, attempts to make a call.

*Note* In some circumstances a *call operator* may also be a *caller*.

*call recipient* means an individual who receives a call from a caller, whether or not the call recipient is a relevant telephone 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 telephone 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*.

- (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 as a call operator; or
    - (ii) to cause any or all of the other person's employees or agents to make calls as a call operator; 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 as a call operator.
- (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, or proposing to make a call.

#### 5 Prohibited calling times

##### *Times — general*

- (1) Subject to subsection (3), 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 subsection (3), 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.

*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 (d), 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.

- (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 telephone 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 telephone 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 telephone account-holder; or
  - (ii) a nominee of the relevant telephone 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 ACMA, the caller demonstrates, to the satisfaction of ACMA, the existence of all the matters mentioned in paragraphs (a) and (b).

*Note* ACMA intends to review the operation of section 5 as soon as practicable after the end of 12 months after this industry standard commences.

## 6 Provision of information during a call

*Information to be provided*

- (1) The following information must be given, or caused to be given, by a caller to a call recipient in accordance with this section:
- (a) the call operator's given name;
- (b) the call operator's:
- (i) full name; or
  - (ii) employee or staff identifier that is sufficient to enable the call operator to be identified:
    - (A) by the employer; or
    - (B) if there is no contract of employment — by the caller;
- (c) the purpose of the call;

- (d) if the call operator makes the call under a contract of employment — the name of the call operator’s employer;
- (e) if the call operator makes the call under a contract of employment — the contact details of the call operator’s employer;
- (f) if the call operator is also:
  - (i) the caller; or
  - (ii) another person who is not an employee of the caller; the caller’s full name, or business name, and contact details;
- (g) if a person other than the caller has caused the call to be made:
  - (i) the other person’s name; and
  - (ii) the other person’s contact details;
- (h) the name and contact details of any person responsible for dealing with consumer inquiries or complaints about:
  - (i) the call operator; or
  - (ii) the caller; or
  - (iii) another person who has caused the call to be made;
- (j) for a call made on or after 1 July 2007 — the following information concerning the call or the caller, in relation to data that is disclosed to the caller after 1 July 2007:
  - (i) the source from which the caller obtained the telephone number, or a statement that the source is a private individual;
  - (ii) if applicable — the name of the person for whom the call is intended;
  - (iii) if applicable — the name and contact details of any organisation that disclosed the information to the caller.

*Note* There are a number of other relevant requirements regarding the provision of information to individuals who are asked to disclose personal information, including the Privacy Principles (where applicable) as set out in the Commonwealth *Privacy Act 1988*.

### *Contact details*

- (2) For subsection (1), and subject to subsection (3), a caller’s **contact details** include a telephone number suitable for receiving telephone calls during normal business hours at the location of the call recipient, and 1 of the following:
  - (a) street address;
  - (b) postal or business address, other than a street address;
  - (c) email address.
- (3) If a call operator:
  - (a) is also a caller; and

- (b) makes calls from the caller's residential address in the course of acting as a call operator;

the caller's contact details do not include a telephone number which is used by the caller principally for residential purposes, and the caller is not required to give that telephone number to a call recipient.

*Time for giving information — research calls*

- (4) For a research call, the caller must:
  - (a) give, or cause to be given, the information mentioned in paragraphs (1) (a) and (c) immediately after the research call commences; and
  - (b) give, or cause to be given, the information mentioned in subparagraph (1) (g) (i):
    - (i) immediately after being asked to do so by the call recipient; or
    - (ii) if the call recipient does not ask the call operator to give the information — before the end of the call; and
  - (c) if:
    - (i) the call recipient asks the caller or call operator to give some or all of the information mentioned in paragraphs (1) (b), (d), (e), (f) and (h) and subparagraph (1) (g) (ii); and
    - (ii) some or all of the information is applicable;give, or cause to be given, all the applicable information immediately after being asked to do so; and
  - (d) if the call recipient asks the caller or call operator to give some or all of the information mentioned in paragraph (1) (j) — give the requested information within a reasonable time (not exceeding 30 days) after being asked to do so.

*Note* If a call recipient does not ask for some or all of the information mentioned in paragraphs (1) (b), (d), (e), (f), (h) and (j) and subparagraph (1) (g) (ii), the caller is not required to give that information to the call recipient.

*Time for giving information — calls other than research calls*

- (5) For a call that is not a research call, the caller must:
  - (a) give, or cause to be given, the information mentioned in paragraphs (1) (a) and (c) and subparagraph (1) (g) (i) immediately after the call commences; and
  - (b) if:
    - (i) the call recipient asks the caller or call operator to give some or all of the information mentioned in paragraphs (1) (b), (d), (e), (f) and (h) and subparagraph (1) (g) (ii); and

- (ii) some or all of the information is applicable;  
give, or cause to be given, all the applicable requested information immediately after being asked to do so; and
- (c) if the call recipient asks the caller or call operator to give some or all of the information mentioned in paragraph (1) (j) — give, or cause to be given, the requested information within a reasonable time (not exceeding 30 days) after being asked to do so.

*Note* If a call recipient does not ask for some or all of the information mentioned in paragraphs (1) (b), (d), (e), (f), (h) and (j) and subparagraph (1) (g) (ii), the caller is not required to give, or cause to be given, that information to the call recipient.

## **7 Standard for terminating a call**

- (1) A caller must immediately terminate a call, or ensure that a call is immediately terminated, if:
  - (a) the caller, or call operator, 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 telephone 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 telephone 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 telephone account-holder; and
- (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 telephone account-holder;

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

- (2) Subsection (1) 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**

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.



**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.