



Protecting your mobile phone number

Mobile phones have become an all encompassing electronic and entertainment device that may include email, a video camera, music and games. Unwanted SMS (Short Message Services), text or picture messages can be particularly annoying. Exercise caution when disclosing your mobile phone number and look for options, such as tick boxes, that allow you to 'opt-out' of receiving commercial messages.

Receiving messages promoting goods and services

Among other things, the *Spam Act 2003* regulates commercial electronic messages sent by email, instant messaging and mobile phone messages, (such as SMS and MMS (multimedia message services)). It is enforced by the Australian Communications and Media Authority (ACMA).

Messages that are selling or advertising goods or services, an interest in land, business or investment opportunities or directing the recipient to a location where goods and services are sold or advertised, are considered to be a commercial electronic message and are covered by the Spam Act.

Any commercial message sent to you that does not meet the following conditions is breaking Australia's spam laws:

- **Consent:** it must be sent with your consent.
- **Identify:** it must contain accurate information about the person or organisation that authorised the sending of the message.
- **Unsubscribe:** it must contain a functional 'unsubscribe' facility to allow you to opt out from receiving future messages from that source. Your request must be honoured within five working days.

Premium services

To cater to mobile phone owners, many new services for adults and children are now available. A premium service is offered at a price that is higher than a typical telephone call and can provide:

- financial data, horoscopes, weather information and ringtones
- mobile chat services
- adult pictures and videos.

Providers may promote these services by SMS and MMS.

Tip: Premium services are subject to a code of practice administered by the Telephone Information Services Standards Council. For more information, visit www.190complaints.com.au

Have you consented to receive a message?

You can consent to receive messages either expressly, or by inferred consent.

Express consent can be given in a variety of ways - for example, by filling in a form, ticking a box on a website, over the phone or face-to-face. Sometimes, by completing a competition entry, you may provide your consent to receiving commercial electronic messages from related parties. In addition, it must be made clear to you that you will receive commercial messages from this person or organisation in the future. No-one can send an electronic message to seek your consent as this is considered a commercial message itself.

Message senders can also **infer consent**. This can be because you have an **existing business or other relationship** with the sender.

Some examples of where consent may be inferred are because:

- you are a member of a club
- you are a subscriber to a service
- you are a client that deals with the sender on an ongoing basis.

Consent may also be inferred if you conspicuously publish your work-related mobile phone number or email address (for example, on a website, brochure, or in a magazine).

Withdrawing consent

A business must make it easy for people to unsubscribe from electronic mailing lists. Unsubscribe instructions must be presented in a clear and conspicuous way, must be honoured within five working days and must be at low cost, or no cost, to you (for example, in the case of SMS unsubscribe facilities, a 1800 telephone number would be acceptable).

CANBERRA CENTRAL
 Purple Building Benjamin Offices
 Chan Street
 Belconnen ACT 2617
 PO Box 78
 Belconnen ACT 2616
 T: 02 6219 5555
 F: 02 6219 5200

MELBOURNE CENTRAL
 Level 44, Melbourne Central Tower
 360 Elizabeth Street
 Melbourne VIC 3000
 PO Box 13112 Law Courts
 Melbourne VIC 8010
 T: 03 9963 6800
 F: 03 9963 6899

SYDNEY CENTRAL
 Level 15, Tower 1 Darling Park
 201 Sussex Street
 Sydney NSW 2000
 PO Box Q500
 Queen Victoria Building NSW 1230
 T: 02 9334 7700
 F: 02 9334 7799

Making a complaint about a message

Complaints can be made to ACMA about unsolicited commercial electronic messages. Many complaints are about:

- a sender that has not clearly identified themselves
- a sender that has sent the message without the recipient's consent
- A message that has no clear unsubscribe function;
- the recipient has unsubscribed from the service but is still receiving messages.

You can make an enquiry or complaint by completing the online form at www.spam.acma.gov.au. The online complaint form outlines the information that ACMA requires from you, and provides an option for you to indicate if you would be willing to assist ACMA in any enforcement actions that may be initiated against the spammer.

Where can I find out more?

For more spam-related information, including frequently asked questions, complaint and enquiry online forms and to download SpamMATTERS software, visit the ACMA website at www.spam.acma.gov.au.

Please note: this document is intended as a guide only and while every reasonable effort has been made to ensure the information is accurate at the time of publication, it should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases.