



Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2006

Telecommunications Act 1997

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

Dated 2006

Chairman

Deputy Chair

[DRAFT ONLY - NOT FOR SIGNATURE]
Australian Communications and Media Authority

1 Name of Standard

This industry standard is the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2006*.

2 Commencement

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

DRAFT ONLY

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 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*.

personal information:

- (a) means information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from that information or opinion; and
- (b) includes information or an opinion of that kind whether or not the information or opinion:
 - (i) is true; and
 - (ii) is recorded in a material form; and
- (c) includes information or an opinion of that kind that forms part of a database.

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:

- (a) if:
 - (i) the first person enters into a contract (other than a contract of employment) or arrangement, or arrives at an understanding, with another person; and
 - (ii) under the contract, arrangement or understanding, the other person undertakes:
 - (A) to make calls; or
 - (B) to cause any or all of the other person's employees or agents to make calls; and
 - (iii) the other person, or an employee or agent of the other person, gives effect to the contract, arrangement or understanding by making a call; or
- (b) if:
 - (i) the first person is the employer of another person; and
 - (ii) the call is made by the other person on behalf of the first person; and
 - (iii) the call is not caused to be made by any other person mentioned in paragraph (a).

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 a call that is not a research call, or attempt to make such a call, on:
 - (a) a weekday before 9am; or
 - (b) a weekday after 8pm; or
 - (c) a Saturday before 9am; or
 - (d) a Saturday after 5pm; 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 a research call, or attempt to make a research call, on:
 - (a) a weekday before 9am; or

- (b) a weekday after 8.30pm; or
- (c) a Saturday before 9am; or
- (d) a Saturday after 5pm; 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 a public holiday; or
 - (b) a day that would be a public holiday if it were a weekday.

Example for paragraph (b)

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 day, or a time of day, is the day or 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 day or time at which the call recipient receives the call at the place at which the call recipient is located is a day or time to which subsection 5 (1), (2) or (3) would apply if it were that day or time at the usual residential address of the relevant telephone account-holder: see paragraph 7 (1) (a).

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.

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) A caller must give a call recipient the following information in accordance with this section:
 - (a) the caller's given name;
 - (b) the purpose of the call;

- (c) if another person has caused the call to be made — the other person's name;
- (d) if the caller makes the call under a contract of employment — the name of the caller's employer;
- (e) if the caller makes the call under a contract of employment — the contact details of the caller's employer;
- (f) the caller's full name and contact details;
- (g) if another person has caused the call to be made — 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 caller; or
 - (ii) another person who has caused the call to be made;
- (i) the source from which the caller obtained the telephone number, including, if applicable, the name and contact details of any person who disclosed that information to the caller;
- (j) the source from which the caller obtained any other personal information used by the caller for the purpose of making the call, including, if applicable, the name and contact details of any person who disclosed that information to the caller.

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

- (2) For subsection (1), **contact details** include:
 - (a) a street address; and
 - (b) a telephone number suitable for receiving telephone calls during normal business hours at the location of the call recipient.

Time for giving information — research calls

- (3) For a research call, the caller must:
 - (a) give the information mentioned in paragraphs (1) (a) and (b) immediately after the research call commences; and
 - (b) give the information mentioned in paragraph 1 (c):
 - (i) immediately after being asked to do so by the call recipient; or
 - (ii) if the call recipient does not ask the caller to give the information — before the end of the call; and
 - (c) if the call recipient asks the caller to give some or all of the information mentioned in paragraphs (1) (d) to (h) — give the requested information immediately after being asked to do so; and
 - (d) if the call recipient asks the caller to give some or all of the information mentioned in paragraphs (1) (i) or (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) (d) to (j), the caller is not required to give that information to the call recipient.

Time for giving information — calls other than research calls

- (4) For a call that is not a research call, the caller must:
 - (a) give the information mentioned in paragraphs (1) (a) to (c) immediately after the call commences; and
 - (b) if the call recipient asks the caller to give some or all of the information mentioned in paragraphs (1) (d) to (h) — give the requested information immediately after being asked to do so; and
 - (c) if the call recipient asks the caller to give some or all of the information mentioned in paragraphs (1) (i) or (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) (d) to (j), the caller is not required to give that information to the call recipient.

7 Standard for terminating a call

- (1) A caller must terminate a call immediately if:
 - (a) the caller 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 day or time at which the call recipient receives the call at the place at which the call recipient is located is a day or time to which subsection 5 (1), (2) or (3) would apply if it were that day or time at the usual residential address of the relevant telephone account-holder; or
 - (b) the call recipient hangs up or otherwise attempts to terminate the call; or
 - (c) 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 1

If a call recipient:

- (a) 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 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 terminate the call immediately.

Example 2

If a call recipient informs a caller that the call recipient is ‘not interested’ in the subject matter of a call, then the caller must terminate the call immediately.

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- (2) The caller must release the line of a telephone account-holder within 5 seconds after a call is terminated in accordance with subsection (1).

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.

Note If a call is made from an outgoing call centre, then the number from which the call is made may not be suitable for receiving return telephone calls. It may be preferable to include a more suitable telephone number in the calling line identification data.

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 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.