

Do Not Call Register— What is a marketing fax?

The Do Not Call Register (the register) provides Australians with the opportunity to 'opt out' of receiving most telemarketing calls and marketing faxes. The register is operated by Service Stream Solutions Pty Ltd.

This information sheet provides an overview of what a marketing fax is for the purposes of the *Do Not Call Register Act 2006* (the Act).

It is against the law for unsolicited marketing faxes to be sent to a number listed on the register unless the person has consented to receive the fax, or the fax falls within an exemption under the Act. Any business that sends a fax to a number on the register, or arranges for a fax to be sent to a number on the register, may be in breach of the legislation and could face penalties.

What is a marketing fax?

The Act broadly defines a marketing fax as a facsimile of a physical document or a fax created by computer software that contains an:

- offer to supply, provide, advertise or promote
 - goods or services;
 - land or an interest in land;
 - a business opportunity or investment opportunity, or
- solicit donations.

The purpose of the fax is assessed against the content of the fax and the presentational aspects of the fax.

Under this definition, a marketing fax must have a particular commercial-type purpose.

Commercial-type purpose

'Marketing faxes' are faxes sent for commercial-type purposes. Even if a fax could ordinarily be considered to be fax marketing, it will not be regarded as a 'marketing fax' for the purposes of the Act unless it falls into the definition specified in the Act (see above).

Marketing faxes include those made to:

- Offer to supply, provide, advertise or promote:
communicating | facilitating | regulating

- Goods or services – common examples of offering to supply, or promoting goods or services include:
 - Offering to supply telecommunications services
 - Selling holiday deals or airfares
 - Advertising tourism adventures
- Land or an interest in land – this would cover marketing faxes from promoters asking whether the consumer wishes to attend an information seminar, the purpose of which to sell unit trust or time-share properties.
- A business opportunity or investment opportunity – this includes marketing faxes from investment companies promoting particular portfolios or schemes.

Exempt marketing faxes

Faxes sent by certain organisations, for example charities, are 'designated marketing faxes' under the Act and are exempt from the prohibition of faxing numbers listed on the register. For more information about these types of faxes please see the information sheet *What faxes could I still receive?*

Further information

Further information about the register can be found at www.donotcall.gov.au.

Please note: this document is intended as a guide only and should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases.

IS 184—July 2010