

Do Not Call Register— What is a telemarketing call?

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

This information sheet provides an overview of what a telemarketing call is for the purposes of the *Do Not Call Register Act 2006* (the Act) and the Telecommunications and Research Calls Industry Standard (the industry standard). It does not deal with calls made for research purposes which are not covered by the Act, but are subject to restrictions on calling times and other matters under the industry standard.

It is against the law for unsolicited telemarketing calls to be made to a number listed on the register unless consent has been given for the call or the call falls within an exemption under the Act or the regulations. Any business that calls a number on the register, or arranges for a call to be made to a number on the register, may be in breach of the legislation and face penalties if it cannot justify the call under the Act.

What is a telemarketing call?

The Act broadly defines a telemarketing call as a voice call made to a telephone number to:

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

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

Under this definition, a telemarketing call has two key elements:

- it must be a voice call, and
- it must have a particular commercial-type purpose (although some commercial calls are excluded from the definition of telemarketing call, as outlined below).

Some other telemarketing calls that may have a commercial purpose are also exempt from the prohibition on calling numbers on the register. These are known as 'designated telemarketing calls' and are described below.

Voice calls

As defined in the Act, 'voice call' may be a recorded or synthetic voice and includes a telemarketer leaving a message on an answering service. It also includes calls made to people who have a speech or hearing impairment and who use facilities that do not rely solely on voices, such as TTY devices and calls made through the National Relay Service.

Commercial-type purpose

'Telemarketing calls' are calls made for commercial-type purposes. Even if a call could ordinarily be considered to be telemarketing, it will not be regarded as a 'telemarketing call' for the purposes of the Act unless it falls into the definition specified in the Act (see above). These calls include those made to:

- **Offer, supply, provide, advertise or promote:**
 - **Goods or services**—common examples of offering to supply, or promoting goods or services include:
 - offering to supply telecommunications services
 - selling wine
 - selling tickets in a promotional competition and
 - seeking to sell insurance.

- **Land or an interest in land**—this would cover calls from promoters asking whether the consumer wishes to attend an information seminar, the purpose of which is to sell unit trust or time-share properties.
- **A business opportunity or investment opportunity**—this includes calls from investment companies promoting particular portfolios or schemes.
- **Solicit donations**

Many calls to solicit donations will be made by or on behalf of organisations such as charities. These are designated telemarketing calls and are exempt from the prohibition against calling numbers listed on the register. However, calls seeking donations from organisations other than charities or charitable institutions are not exempt and are subject to the prohibition against calling a number on the register.

Dual-purpose calls

Some calls may have more than one purpose, where the telemarketing element is secondary to the main purpose of the call. For example, a call made for the purposes of carrying out opinion-polling or market research is not a telemarketing call. If, however, such a call contains any kind of sales offer, advertisement or promotion, or some other telemarketing element, then it becomes a 'telemarketing call' and must not be made to a number on the register.

On the other hand, a dual-purpose call that includes opinion polling or a standard questionnaire market research component, as well as a telemarketing component may be made to any number that is not on the register, during the extended hours available to 'research calls' under the industry standard.

Some further examples of telemarketing calls under the Act are:

- customer satisfaction calls that have an intention to solicit sales
- calls that offer free goods as part of, or together with, overall sales campaigns
- calls requesting the person attend an information seminar, the purpose of which is to sell goods or services
- calls inviting subscription to a contact list that will be used as a basis for future sales calls
- calls offering trialware—free use of a product for a set period, with an option for financial subscription or purchase afterwards
- calls made to obtain the person's consent to receive future telemarketing calls
- calls offering subscriptions for a set period of time at a special rate.

Calls that are *not* telemarketing calls

Regulations made under the Act provide that the following calls are not telemarketing calls:

- product recall calls
- fault rectification calls
- appointment rescheduling calls
- appointment reminder calls
- calls relating to payments
- solicited calls
- one of the above call types that is not answered by the person to whom the call is made.

Exempt telemarketing calls

Calls made by certain organisations, for example charities, are 'designated telemarketing calls' under the Act and are exempt from the prohibition on calling numbers listed on the register. For more information about these types of calls please see the information sheet *What calls 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.

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