

Do Not Call Register—Consent

Information for consumers

Introduction

The Do Not Call Register (the register) provides Australians with the opportunity to ‘opt out’ of receiving most telemarketing calls and marketing faxes.

However, if a person (or a nominee of that person) has provided consent to an organisation to be contacted, they may still receive certain telemarketing calls and marketing faxes.

This information sheet provides an overview of the consent provisions of the *Do Not Call Register Act 2006* (the Act).

Types of consent

Consent may be either express or inferred. Consent can only be provided by the relevant account-holder or a nominee of the relevant account-holder. A nominee is a person nominated in writing by the relevant accountholder or a ‘deemed nominee’.

If a person provides a number to a business for the purpose of being contacted by that business (either by phone or fax), the person is deemed to be able to provide consent, even if they are not the account holder.

This means that when obtaining either express or inferred consent from a person, a business is not required to check whether the person is the relevant-account-holder.

This ‘deeming’ arrangement only applies where the person, or someone acting on their behalf, provides a number to a business for the purpose of providing consent.

A consumer can contact a business directly to withdraw their consent to receive future calls or marketing faxes from that business.

What is ‘express consent’?

Express consent is where a person clearly tells, or indicates to, a business that he or she is happy to receive calls or marketing faxes from them, and directly provides his or her number to them for that purpose. For example, express consent is provided where a person ticks a box on a form, agreeing to receive future

telemarketing calls or marketing faxes from a particular business.

Duration of express consent

Express consent will be taken to last for a period of three months from the date it was given, unless the consent was expressed to have been for a specified period or an indefinite period.

What is ‘inferred consent’?

Inferred consent is where a business has reason to believe that a person is willing to receive a telemarketing calls or marketing faxes, based on:

- the conduct of the person, and
- the business or other relationship that exists between the person and the business.

Firstly, there must be an existing relationship between the business and the person called. Such relationships may be:

- **Existing business relationships.** A business relationship may continue to exist in the absence of ongoing monetary transactions. For example, a person may pay to join a scheme that entitles him or her to access benefits or discounts for a fixed period. A business relationship may be taken to exist for the period of the membership, even if the person did not access the benefits or discounts.
- **Existing relationships of a non-business kind,** such as a friend or family member.

However, it is also necessary to look at the nature of the consent on a case-by-case basis, and assess what sort of telemarketing calls or marketing faxes a person would reasonably expect to receive under the inferred consent provisions.

For instance, it is possible that a person who holds a ‘XYZ Bank’ credit card may reasonably expect to receive telemarketing calls or marketing faxes about ‘XYZ Bank’ home loans or ‘XYZ Bank’ savings products. However, it is less likely to be reasonable for a person with a ‘XYZ Bank’ credit card to be cold called by ‘Lucky’s Financial Services’, regardless of

the subsidiary relationship these entities might share. Where a person indicates that they do not wish to receive telemarketing calls or marketing faxes from the business consent ends immediately and can no longer be inferred.

Duration of inferred consent

Inferred consent has no set duration, and will be assessed on a case-by-case basis.

Prior acceptance of telemarketing calls or marketing faxes

If a person on the register has previously accepted telemarketing calls or marketing faxes from a company, this does not mean that consent can be inferred for receiving further telemarketing calls or marketing faxes from that business.

Publication of a number

The publication of a telephone number (for instance, in the telephone directory, or through an internet site), does not mean that the person can be taken to have consented to receive telemarketing calls or marketing faxes. The public availability of a number is not enough to establish consent.

Withdrawing consent

If you are receiving telemarketing calls or marketing faxes from a business with which you have an existing relationship, and you do not wish to continue receiving these communications, you should contact the business to request that it remove you from its marketing list.

If you continue to receive telemarketing calls or marketing faxes from the business after you have withdrawn your consent, you can lodge a complaint by calling the Do Not Call Register on 1300 792 958 or by visiting the register's website 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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