

## Do Not Call Register— What calls and faxes could I still receive?

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.

It is against the law to make unsolicited telemarketing calls or send marketing faxes to a number listed on the register, unless consent (express or inferred) has been obtained for the contact. Any business that makes a telemarketing call or sends a marketing fax to a number on the register, or arranges for a telemarketing call to be made or a marketing fax to be sent to a number on the register, may be in breach of the legislation and face penalties.

To avoid possible penalties, businesses planning to make telemarketing calls or send marketing faxes are able to check, or 'wash', their contact lists against the register. Businesses do this by submitting their lists to the register operator.

A person who has registered their number may continue to receive calls or faxes:

- if the number was placed on the register within the past 30 days
- if the contact was a 'designated telemarketing call' or 'designated marketing fax' and so is exempt from the prohibition against calling or faxing numbers on the register
- if the call was not a 'telemarketing call' or 'marketing fax' as defined in the *Do Not Call Register Act 2006* (the Act)
- if the person consented to receiving the call or fax.

### Numbers registered within the past 30 days

A person who makes telemarketing calls (the telemarketer) or who sends marketing faxes (the fax marketer) can submit their contact lists for checking against the register to identify which numbers are on the register and must not be contacted, and which numbers are not on the register and may be contacted.

Under the Act, a telemarketer or fax marketer can rely on the information they receive through this 'washing' process for 30 days.

This means that if you placed your number on the register after the telemarketer or fax marketer checked the register, the telemarketer or fax marketer may not know that your number is on the list and should not be called or faxed. Therefore, if the telemarketer or fax marketer contacts you within the next 30 days, relying on their washed list, the telemarketer or fax marketer will not be in breach of the Act.

### Designated telemarketing calls and marketing faxes

Calls or faxes made or sent by certain organisations are deemed to be 'designated telemarketing calls' or 'designated marketing faxes' and are exempt from the prohibition on contacting numbers listed on the register. The following organisations are exempt.

#### Charities

Charities provide valuable services to the community and rely on various ways to raise funds to support their work, including soliciting donations by telephone and fax. Where a call or fax is authorised by a charity or charitable institution, it is permitted under the Act.

#### Religious organisations

Religious organisations provide valuable support and community services as well as moral guidance to many people in the community. Where a call or fax is authorised by a religious organisation, it is permitted under the Act.

#### Educational institutions

Educational institutions may need to contact their students, or former students, to inform them of the needs of the institution and to seek funds. Where a call or fax is authorised by an educational institution, it is permitted under the Act.

**Government bodies**

Government bodies need to use the most effective means, including telephone and fax contact, to provide information to citizens on a range of issues. Where a call or fax is authorised by a government body, the contact is permitted under the Act.

**Registered political parties, independent MPs and political candidates**

This exemption allows for fundraising for state, federal or territory electoral or political purposes. Where a call is authorised by a registered political party, an independent member of a parliament or a candidate in an election, the call or fax is permitted under the Act.

However, where the call or fax relates to goods or services, the exempt organisation must be the supplier or prospective supplier of those goods and services for the call to be exempt.

While the above organisations and individuals are exempt from the prohibition on calling numbers on the register they are still required to comply with the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (industry standard).

For further information on the rules set out in the industry standard, please refer to the Australian Communications and Media Authority's (the ACMA) information sheet, *Overview of the telemarketing and research industry standard*

**Which calls or faxes can I still receive?**

Calls or faxes which do not have a commercial marketing element do not fall within the Act definition of a telemarketing call or marketing fax, and can be made to numbers listed on the register. These include calls or faxes made to conduct opinion polling or carry out standard questionnaire-based research ('research calls'). As outlined above, calls made or faxes sent for research purposes must still comply with the legal requirements set out in the industry standard.

The ACMA is required to produce a fax marketing industry standard. In doing so, the ACMA will consult with the fax marketing industry.

A number of other types of calls are also not considered 'telemarketing' calls for the purposes of the Act, and may continue to be received. These are:

- 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.

**Consent to receive calls or faxes**

A person making a telemarketing call or sending a marketing fax is still permitted to call or fax a number on the register if the account-holder or a person nominated in writing by the account holder, has consented to receive the call or fax. Consent can be given expressly or it may be inferred by the person making the call or sending the fax if there is an existing business relationship with the company. For further information on 'consent' please refer to the ACMA's information sheet, *Consent – Information for Consumers*. A person can also make a telemarketing call or send a marketing fax to a number if another person has given that number for the purpose of receiving a call or fax at that number.

**Further information**

Further information about the register, the regulations and the industry standard can be found at [www.donotcall.gov.au](http://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 131—July 2010