

Impact Lists Do Not Call Register FAQ's

These FAQ's are a guide only. We accept no liability for their use. A Telemarketer or Fax Broadcaster should visit the Telemarketer Access Portal to ensure they comply with the Do Not Call Register Act 2006 and Do Not Call Register (Consequential Amendments) Act 2006.

Introduction

The Do Not Call Register has been established by the Australian Government. Under the Do Not Call Register Act 2006 and Do Not Call Register (Consequential Amendments) Act 2006, the **Australian Communications and Media Authority (ACMA)** is responsible for:

- establishing and overseeing the operation of the Do Not Call Register, and
- determining and enforcing an industry standard for telemarketing and research calls
- Providing Australians with the opportunity to 'opt out' of receiving unsolicited telemarketing calls and marketing faxes

What is the Do Not Call Register?

The Do Not Call Register is a database of telephone and fax numbers. Generally, it will be against the law to make unsolicited telemarketing calls or fax marketing to a number listed on the Do Not Call Register. This is subject to some limited exemptions.

Telemarketing calls and Marketing Faxes must not be made to a number registered on the Do Not Call Register

Telemarketing calls and Marketing Faxes must not be made to numbers listed on the Do Not Call Register unless: the individual telephone/fax account holder, or their nominee, has consented to receiving the call in advance

- within the previous 30 days, the telemarketer/fax marketer responsible for a call/fax has received information from the register operator indicating that the number was not recorded on the Do Not Call Register
- the call/fax was made by mistake
- the person making the call/fax took reasonable precautions and exercised due diligence to avoid breaching the relevant requirements of the Act, or
- the call/fax is a 'designated telemarketing call or fax' authorised by a government body, religious organisation, charity, registered political party, independent member of parliament, parliamentary election candidate or educational institution. Only particular types of telemarketing calls and faxes constitute designated telemarketing calls and faxes.

This rule applies equally to telemarketers and fax marketers and other organisations which cause telemarketing calls or faxes to be made to Australian numbers, for example, by contracting or entering into arrangements with telemarketers to provide telemarketing services on their behalf.

An individual's consent to receive calls and or faxes must be 'express' or capable of being 'inferred' from the individual's business and other relationships.

Express consent may occur where an individual, or their nominee, has specifically agreed to receive a telemarketing call/fax from the entity responsible for the call being made. Importantly, where express consent is given for an unspecified period, then the express consent is taken to expire three months after it was given.

Inferred consent may occur where an individual does not expressly consent to receiving a particular telemarketing call/fax but there is a clear and reasonable expectation that the call/fax will be received. An example is where a bank calls a current account holder. Consent may not be inferred simply because a telephone number has been published.

Telemarketing calls include cold calling and calls to customers that, among other things, advertise or promote the

supply of goods or services, land or interests in land, business or investment opportunities, or solicit donations.

Marketing Faxes include 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.

What is a telemarketing call?

A telemarketing call is defined in the Do Not Call Register Act as a voice call made with a purpose to offer, supply, provide, advertise or promote:

- goods or services
- land or an interest in land
- a business opportunity or investment opportunity
- calls to solicit donations.

Calls that are not considered telemarketing calls are:

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

What exemptions apply?

There are some limited exemptions which will allow certain public interest entities to make specific types of telemarketing calls to numbers listed on the Do Not Call Register. Government bodies, educational or religious organisations, registered political parties, independent members of parliament, electoral candidates and charities will all be entitled to these exemptions.

Exemptions do not extend to all types of telemarketing calls, and even entities responsible for calls subject to the limited exemptions need to be careful they do not breach the Act.

Further exemptions apply where an individual has consented to receiving a call or where consent can be reasonably inferred from the individual's business and other relationships. This means that someone who has registered their number on the Do Not Call Register could still lawfully receive some telemarketing calls if they have consented to receiving such calls in advance.

When is a telemarketer allowed to call?

Even if a number is on the register, telemarketers may call it if:

- they have given prior consent to receive the call
- a number has only registered within the last 30 days
- the call is from an exempt organisation, such as a charity or political party.
- Calls may be made by mistake, even though reasonable precautions were taken to prevent this happening

How will telemarketers and fax marketers know which numbers they can call?

The Act allows telemarketers to submit their calling lists to be checked against the Do Not Call Register. Registered numbers will be removed and a 'clean' list returned to the telemarketer. Telemarketers are only permitted to call the remaining telephone numbers on the checked calling lists. Visit the Do Not Call Register Telemarketer Access Portal

-www.donotcall.gov.au/dncrtelem/index.cfm

Are there any penalties for breaching the legislation?

Yes. Anyone who breaches the rules in the legislation may face penalties and injunctions. ACMA will be able to issue formal warnings or infringement notices or commence court proceedings. The courts will be able to impose fines ranging from \$1,100 to \$1.1 million for each breach. Those who have suffered loss or damage as a result of a breach will be able to apply for compensation.

Will the Do Not Call Register Act apply to calls originating outside Australia?

Yes. The legislation applies irrespective of where the call originates. Telemarketers and Fax Marketers operating outside Australia will face the same penalties as telemarketers and Fax Marketers operating within the country, if they call a number on Australia's Do Not Call Register.

Agreements for telemarketing calls must comply with the Do Not Call Register Act

The Do Not Call Register Act places a positive obligation on anyone entering into telemarketing contracts or arrangements to include express provisions requiring compliance with the Act. This rule applies if there is a reasonable likelihood that calls will be made to telephone/fax numbers eligible to be listed on the Do Not Call Register.

As an example, this rule will apply where a business operating in Australia engages an overseas telemarketer /fax broadcaster to provide telemarketing or faxing services to Australian numbers.

Australian telemarketers and fax broadcasters and overseas telemarketers and fax broadcasters who call Australian numbers will be equally subject to this rule.

Will Impact Lists Be Supplying Certified Screened Data

When data is washed against the Do Not Call Register by a company, that data will be provided a 30-day protection period should they happen to call a telephone number that has been subsequently listed on the Do Not Call Register. The 30-day protection period applies **only to the party** that screens, or commissions the screening, of the list against the Do Not Call Register. For this reason, if a list owner undertook the screening of its own databases in order to provide its clients with clean data, the 30-day protection period would apply to the Owner, but would not transfer to the end user. Therefore, it is not possible for Impact Lists to generically provide pre-washed telemarketing data to clients.

Impact Lists is able to provide a **Do Not Call Register Screening Service**, whereby we can wash telephone/faxing data against the Do Not Call Register as an **agent for specific clients**. In such instances Impact Lists will be considered to be washing the data on **behalf** of the specific client, thus allowing the 30-day protection period to transfer from Impact Lists to that client. We offer this service for new list orders as well as for previously supplied lists.

Accessing the Do Not Call Register to have customer lists washed

Visit the Do Not Call Register Telemarketer Access Portal

-www.donotcall.gov.au/dncrtelem/index.cfm

After setting up an account and paying any applicable fees, users can check numbers by either uploading a list to the Do Not Call Register's industry website, the Telemarketer Access Portal (TAP). Lists can also be posted in on CD-ROM or by using the 'quick check' option. The quick check allows users to check a short list of up to 10 numbers at a time through the website.

In order to be washed, calling/faxing lists must be formatted correctly, in CSV format. CSV is a common format that can be found under the File -> Save As option in most Microsoft Office applications.

There is a four step process for first-time users of the list washing service:

1. **Set up an account.** The user provides their details, selects a preferred subscription type, agrees to the terms and conditions of use and arranges for payment. Each user is issued with a user ID and password to access their account.
2. **Submit your list or use the 'quick check' option.** A list can range from one number to millions of numbers.
3. **List will be washed.** Very large lists may take a longer time to wash.
4. **The washed list will be made available to download.** The washed list will show which numbers are, or are not, on the register. It will also show any invalid numbers. Invalid numbers will need to be corrected and resubmitted before they can be called. A list-washing receipt will also be generated for the user's records.
5. **The Act sets out that a 30 day provision is available to people accessing the register. This means that your list is valid for 30 days after washing.**

Telemarketing Standards

Standards, which apply to telemarketing calls as well as opinion polling and standard questionnaire based research calls, aims to provide a minimum set of requirements for these calls. It aims to provide greater certainty for consumers on the minimum level of behaviour they can expect from those making unsolicited telemarketing and research calls.

The Standard:

- prohibit callers from making telemarketing and research calls during specific hours and on particular days
- require callers to provide particular information about themselves to those they are calling
- specify situations in which callers are obliged to terminate a call, and
- require callers to enable calling line identification.
- The standard will commence at the same time as the Do Not Call Register.

Telemarketing calls can only be made:

- between 9am and 8pm on weekdays and
- between 9am and 5pm on Saturdays.

Telemarketing calls are prohibited on:

- Sundays,
- New Year's Day,
- Australia Day,
- Good Friday,
- Easter Monday,
- Anzac Day,
- Christmas Day,
- Boxing Day, or a holiday on a weekday given in lieu of any of these public holidays.

However, it is important to note that State laws controlling telemarketing still operate alongside the Do Not Call Register regime and telemarketing calls into States may also be prohibited on State declared public holidays.

The Industry Standard also sets out what information must be provided by a call operator during a call including:

- their first name,
- the purpose of the call and
- the name of the person or organisation that they are calling on behalf of.

If a call recipient asks for it, a call operator must also provide:

- the name of their employer;
- their employer's contact details;
- an identifier that is sufficient for their employer to identify them;
- the name and contact details of the person or organisation that they are calling on behalf of;
- the name and contact details of anyone responsible for dealing with complaints; and
- the source of the contact details obtained after 1 July 2007.

The Industry Standard also dictates when a call should be terminated.

For example -if an operator makes a call to someone's mobile who lives in Perth but is staying in Sydney and they receive the call at 7pm Perth time, which is 9pm Sydney time, and the operator receives information that makes them aware that they are calling at the wrong time, then the operator must terminate the call unless the recipient asks for the call to continue. The Standard also states that a caller must ensure that calling line identification (CLI) is enabled.

What is a Marketing Fax?

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

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

What exemptions apply?

The industry standard applies to all participants in the fax marketing industry including some individuals and organisations that are not covered by the general prohibition contained in the Do Not Call Register Act 2006.

When is a Fax Marketer not allowed to fax?

Fax marketers are not able to fax people during the times below, unless a fax recipient has consented to be faxed at that time.

A sender must not send a marketing fax, or cause a marketing fax to be sent on:

- a weekday before 9.00am or after 8pm
- a Saturday before 9.00am or after 5.00pm
- a Sunday
- a national public holiday

Other Fax Marketing Requirements

- A marketing fax must include the following information:
- The name of fax advertiser
- ABN of the fax advertiser or equivalent business identification when the sending a fax is to a foreign company
- The contact details of the fax advertiser (including a telephone or fax number, and a street or email address)
- The destination number that the fax is intended to be sent to
- The details of how the recipient can send an opt-out message
 - A statement advising that a fax recipient may opt out of receiving any future faxes from the person who authorised the sending of the fax by communicating an opt-out message to an out-out address and
 - An opt-out address to which fax recipients can communicate an opt out message

The information required must be:

- Displayed in a clear and conspicuous manner
- Included on the first page of the fax
- Displayed using a minimum size 10 point font

Out-out facility

A person can opt-out of receiving marketing faxes by sending to, leaving at, or otherwise communicating an opt-out message to the opt-out address displayed in the fax.

Fax marketers are required to display a fax number to which an opt-out message may be sent: and at least one of the following:

- A local or toll free number
- An email address
- A website address

A fax marketer also must ensure that:

- The opt-out address provided in the fax is capable of receiving out-out messages at all times
- Remove the fax recipients numbers from any list of Australian numbers used by the sender as soon as possible, and no later than seven days, after receiving an opt-out message

Is there a limit on the number of faxes that can be sent to a recipient?

A person who sends faxes must make reasonable efforts to ensure that no more than 10 faxes authorised to be sent by the same fax advertiser are sent to a particular Australian number in any single 24 hour period.

Further information

Further information is available on the **ACMA** website -
http://www.acma.gov.au/WEB/STANDARD//pc=PC_300340

For specific enquiries, please contact the Do Not Call Taskforce by email on
donotcalltaskforce@acma.gov.au or telephone 1300 785 749

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Can Telemarketer Access Portal in the above sentence be linked to: <https://www.donotcall.gov.au/dncrtelem/index.cfm>