



Fax Marketing Industry Standard 2011

made under subsection 125B (1) of the
Telecommunications Act 1997

The AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY makes this
industry standard under subsection 125B(1) of the *Telecommunications Act 1997*.

Dated *20 April 2011*

Chris Chapman
[signed]
Member

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[signed]
Member / ~~General Manager~~

Australian Communications and Media Authority

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1 Name of industry standard

This industry standard is the *Fax Marketing Industry Standard 2011*.

2 Commencement

This industry standard commences on the day after it is registered.¹

3 Interpretation

In this industry standard:

ACMA means the Australian Communications and Media Authority.

Act means the *Telecommunications Act 1997*.

Australian number has the meaning given by section 4 of the *Do Not Call Register Act 2006*.

consent has the same meaning as in Schedule 2 to the *Do Not Call Register Act 2006*.

fax means a marketing fax.

fax advertiser means a participant in a section of the fax marketing industry that authorises the sending of a marketing fax for at least one of the following purposes:

- (a) marketing, advertising or promoting goods or services, where the participant is the supplier or prospective supplier of the goods or services;
- (b) advertising or promoting a supplier or prospective supplier of goods or services, where the participant is the supplier or prospective supplier of the goods or services;
- (c) marketing, advertising or promoting land or interests in land, where the participant is the supplier or prospective supplier of the land or interests in land;
- (d) advertising or promoting a supplier or prospective supplier of land or interests in land, where the participant is the supplier or prospective supplier of the land or interests in land;
- (e) marketing, advertising or promoting business opportunities or investment opportunities, where the participant is the provider, or prospective provider, of the business opportunities or investment opportunities;
- (f) advertising or promoting a provider, or prospective provider, of business opportunities or investment opportunities, where the participant is the provider

or prospective provider of the business opportunities or investment opportunities;

- (g) soliciting donations;
- (h) conducting opinion polling; or
- (i) carrying out standard questionnaire-based research.

Note For example, if an entity seeks to promote a new product it has created and authorises another entity to send, or cause to be sent, marketing faxes promoting its new product, the first entity will be the fax advertiser. If an entity seeks to promote a new product it has created and sends a marketing fax promoting its own new product, the entity will be taken to be both the sender and the fax advertiser for the relevant marketing fax.

fax recipient means a person who receives a fax from a sender, whether or not the fax recipient is a relevant account holder.

foreign company has the meaning given by section 9 of the *Corporations Act 2001*.

nominee has the meaning given by section 39 of the *Do Not Call Register Act 2006*.

number means an Australian number.

opt-out address means:

- (a) a fax number to which an opt-out message may be sent; and
- (b) at least one of the following:
 - (i) a local or toll free phone number through which the fax recipient may leave an opt-out message;
 - (ii) an email address to which an opt-out message may be sent; or
 - (iii) a website address at which the fax recipient can convey an opt-out message.

opt-out message means a message to the effect that the fax recipient does not want to receive any faxes from the fax advertiser.

relevant account holder has the meaning given by section 4 of the *Do Not Call Register Act 2006*.

send has the meaning given by section 4 of the *Do Not Call Register Act 2006*.

sender means a participant in a section of the fax marketing industry that sends, or proposes to send a marketing fax.

Note Other words and phrases applicable to this standard are defined in the Act, including:

- fax marketing industry
- marketing fax

- participants in a section of the fax marketing industry
- standard questionnaire-based research
- section of the fax marketing industry.

4 Persons to whom this industry standard applies

For the purposes of section 125B of the Act, this industry standard applies to participants in each section of the fax marketing industry.

5 Prohibited times for the sending of faxes

(1) Subject to subsection (3), a sender must not send a fax on:

- (a) a weekday before 9 am; or
- (b) a weekday after 8 pm; or
- (c) a Saturday before 9 am; or
- (d) a Saturday after 5 pm; or
- (e) a Sunday.

(2) In addition to the limitations imposed by subsection (1), and subject to subsection (3), a sender must not send a fax at any time on:

- (a) New Year's Day;
- (b) Australia Day;
- (c) Good Friday;
- (d) Easter Monday;
- (e) Anzac Day;
- (f) Christmas Day;
- (g) Boxing Day;
- (h) a holiday on a weekday given in lieu of a public holiday mentioned in paragraphs (a) to (g).

Example

If Christmas Day falls on a Saturday, the sending of faxes would be prohibited on the whole of Christmas Day. Faxes would also be prohibited on any other day that is a public holiday in lieu of Christmas Day.

Exception where consent has been given in advance

(3) Subsections (1) and (2) do not apply to the sending of a fax if:

- (a) either:
 - (i) the relevant account holder; or
 - (ii) a nominee of the relevant account holder;

has consented in advance to receiving a fax on a day or at a time referred to in those subsections; and

- (b) the sender sends the fax on the day, or at the time to which the consent applies; and
- (c) if required by the ACMA, the sender demonstrates, to the satisfaction of the ACMA, the existence of all the matters mentioned in paragraphs (a) and (b).

(4) In this section a reference to a time of day, or a day, is to the time of day, or day, at the place that is the usual address of the relevant account holder.

6 Provision of information within a fax

Information to be provided

(1) A sender must not send a fax which does not contain the following information:

- (a) the name of the fax advertiser;
- (b) the Australian Business Number (ABN) of the fax advertiser, or equivalent business number identification if the fax advertiser is a foreign company;
- (c) the contact details of the fax advertiser;
- (d) the destination number that the fax is intended to be sent to;
- (e) the details of how the fax recipient can communicate an opt-out message, including:

- (i) a statement to the effect that the fax recipient may opt-out of receiving any future faxes from the fax advertiser by conveying an opt-out message to an opt-out address; and
- (ii) an opt-out address to which fax recipients can communicate an opt-out message.

(2) The information to be provided under subsection (1) must be:

- (a) displayed in a clear, legible and conspicuous manner;
- (b) included on the first page of the fax at a minimum;
- (c) be displayed using a minimum 10 point font size.

Contact details

- (3) For subsection (1), **contact details** includes a telephone or fax number suitable for receiving telephone calls or faxes during normal business hours at the location of the fax advertiser, and at least one of the following:
- (a) street address;
 - (b) postal or business address, other than a street address;
 - (c) email address.

7 Standard for providing fax recipient with facility to opt out from receiving further faxes

- (1) For the purpose of subsection (2), a fax recipient will be taken to have opted out of receiving fax messages if the person has sent to, left at or otherwise communicated an opt-out message to the opt-out address.
- (2) A sender must have in place processes to ensure that:
- (a) the opt-out address provided in the fax is reasonably likely to be capable of receiving opt-out messages at all times;
 - (b) as soon as possible, and no later than 7 days, after a fax recipient has opted-out of receiving fax messages, the fax recipient's number is removed from any list of Australian numbers used by the sender to arrange for the sending of faxes on behalf of the fax advertiser.

8 Limit on number of faxes to be sent to a recipient in a period

A sender must make reasonable efforts to ensure it does not send more than 10 faxes, which are authorised to be sent by the same fax advertiser, to a particular Australian number in any single 24 hour period.

9 Operation of State and Territory laws

This industry standard is not intended to exclude the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this industry standard.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.