



# Telecommunications (Telemarketing and Research Calls) Industry Standard 2017

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The Australian Communications and Media Authority makes the following industry standard under subsection 125A(1) of the *Telecommunications Act 1997*.

Dated: 20 March 2017

Richard Bean  
[signed]  
Member

James Cameron  
[signed]  
Member/~~General Manager~~

Australian Communications and Media Authority

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## Part 1—Preliminary

### 1 Name

This is the *Telecommunications (Telemarketing and Research Calls) Industry Standard 2017*.

### 2 Commencement

This industry standard commences at the start of the day after it is registered.

Note: The Federal Register of Legislation may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### 3 Authority

This industry standard is made under subsection 125A(1) of the *Telecommunications Act 1997*.

### 4 Repeal of the *Telemarketing and Research Industry Standard 2007*

The *Telemarketing and Research Industry Standard 2007* (Registration No. F2007L00815) is repealed.

### 5 Persons to which this industry standard applies

For section 125A of the Act, this industry standard applies to participants in each section of the telemarketing industry.

Note: The content of this industry standard relates to making, attempting to make, or proposing to make, a call.

### 6 Definitions

(1) 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*.

**call** means a telemarketing call.

**caller** means a participant in a section of the telemarketing industry that makes, attempts to make, or proposes to make, a call.

**calling line identification** means a facility in telecommunications networks that indicates either the telephone number from which the call was initiated or to which the call recipient may call back.

**call recipient** means an individual who receives a call from a caller, whether or not the call recipient is a relevant account-holder.

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

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

**research call** means a call described in paragraph (b) of the definition of **telemarketing call** in section 7 of the Act.

**telemarketing call** has the meaning given by section 7 of the Act.

Note: Section 7 of the Act contains the following definition:

**telemarketing call** means:

- (a) a telemarketing call (within the meaning of the *Do Not Call Register Act 2006*) that is made to an Australian number; or
- (b) a voice call (within the meaning of the *Do Not Call Register Act 2006*) that is made to an Australian number, where, having regard to:
  - (i) the content of the call; and
  - (ii) the presentational aspects of the call;it would be concluded that the purpose, or one of the purposes, of the call is:
  - (iii) to conduct opinion polling; or
  - (iv) to carry out standard questionnaire-based research.

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

Note: The definition of voice call contained in section 4 of the *Do Not Call Register Act 2006* includes, among other things, a call that involves a recorded or synthetic voice.

- (2) In this industry standard, and in addition to any other meaning of **cause**, a person (the **first person**) is taken to have **caused** a call to be made if:
  - (a) the first person enters into a contract (other than a contract of employment) or arrangement, or arrives at an understanding, with another person; and
  - (b) under the contract, arrangement or understanding, the other person undertakes:
    - (i) to make calls; or
    - (ii) to cause any or all of the other person's employees or agents to make calls; and
  - (c) the other person, or an employee or agent of the other person, gives effect to the contract, arrangement or understanding by making a call.
- (3) In this industry standard, and in addition to any other meaning of **cause**, a person (the **first person**) is taken to have **caused** a call to be made if:
  - (a) the first person is the employer of another person; and
  - (b) the call is made by the other person as a call operator on behalf of the first person; and
  - (c) the call is not caused to be made by any other person mentioned in subsection (2).

## 7 References to other legislative instruments

In this industry standard, unless the contrary intention appears, a reference to another legislative instrument is a reference to that other legislative instrument as in force from time to time.

Note 1: For references to Commonwealth Acts, see section 10 of the *Acts Interpretation Act 1901*; and see also subsection 13(1) of the *Legislation Act 2003* for the application of the *Acts Interpretation Act 1901* to legislative instruments.

Note 2: All Commonwealth Acts and legislative instruments are registered on the Federal Register of Legislation.

## Part 2 — Standards

### 8 Prohibited calling times

#### *Times — general*

- (1) Subject to subsections (3) and (5), a caller must not make, or cause to be made, a call that is not a research call, or attempt to make such a call, 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.

Note: A caller may be prohibited from making a call, or attempting to make a call, at other times, in accordance with State or Territory laws: see section 15.

#### *Times — research calls*

- (2) Subject to subsections (3) and (5), a caller must not make, or cause to be made, a research call, or attempt to make a research call, on:
- (a) a weekday before 9 am; or
  - (b) a weekday after 8.30 pm; or
  - (c) a Saturday before 9 am; or
  - (d) a Saturday after 5 pm; or
  - (e) a Sunday before 9 am; or
  - (f) a Sunday after 5 pm.

Note: A caller may be prohibited from making a call, or attempting to make a call, at other times, in accordance with State or Territory laws: see section 15.

- (3) Despite paragraphs (1)(a) to (d), or (2)(a) to (f) and subject to subsection (5), a caller must not make, or attempt to make a call at any time on:
- (a) a day that is any of the following national public holidays:
    - (i) New Year's Day;
    - (ii) Australia Day;
    - (iii) Good Friday;
    - (iv) Easter Monday;
    - (v) Anzac Day;
    - (vi) Christmas Day;
    - (vii) Boxing Day; or
  - (b) a holiday on a weekday given in lieu of a public holiday mentioned in paragraph (a).

#### *Example*

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

Note: Callers are not prohibited from making or attempting to make calls on a State or Territory public holiday, unless the State or Territory public holiday falls on a day prohibited in subsections (1) or (3), and subject to the prohibited calling times in subsections (1) and (2).

- (4) For subsections (1), (2) and (3), a reference to a time of day, is the time of day at the place that is the usual residential address of the relevant account-holder.

Note: In addition to subsections (1), (2) and (3), a caller must immediately terminate a call if they receive information that would lead a reasonable person to conclude that the call recipient is not at the usual residential address of the relevant account-holder and has received the call at a time that is a calling time described in subsection 8(1), (2) or (3): see paragraph 13(1)(a) and subsection 13(2).

*Exception where express consent has been given in advance*

- (5) Subsections (1), (2) and (3) do not apply if:
- (a) either:
    - (i) the relevant account-holder; or
    - (ii) a nominee of the relevant account-holder;has provided express consent in advance to receiving a particular call on a day or at a time referred to in those subsections; and
  - (b) the caller only makes or attempts to make the call on the day, or at the time to which the consent applies; and
  - (c) if required by the ACMA, the caller demonstrates, to the satisfaction of the ACMA, the existence of all the matters mentioned in paragraphs (a) and (b).

## **9 Provision of information during telemarketing calls other than research calls**

*Application of this section*

- (1) This section applies to all calls other than calls that are research calls.

*Information to be provided as soon as the call starts*

- (2) The caller must give, or cause to be given, the following information to the call recipient as soon as the call starts:
- (a) the given name of the individual making the call (unless the call is made solely using a recorded or synthetic voice);
  - (b) if the individual making the call is not self-employed, the company name or registered business name of the employer of the individual making the call, or if these details do not exist, a name by which the organisation or individual can be readily identified;
  - (c) if the individual making the call is self-employed, their registered business name (if applicable), or if these details do not exist, a name by which the organisation or individual can be readily identified;
  - (d) the name of the person causing the call to be made (if not already mentioned);
  - (e) the purpose of the call.
- (3) Subsection (2) does not apply if:
- (a) the call recipient terminates the call before the information can be provided; or
  - (b) the caller terminates the call within 5 seconds, without speaking to the call recipient.

*Information to be provided immediately upon request*

- (4) The caller must give, or cause to be given, the following information to the call recipient immediately after being asked to do so by the call recipient:
- (a) the contact details of the employer of the individual making the call, or, if the individual calling is self-employed, their contact details;

- (b) the contact details of the person that caused the call to be made;
- (c) the name and contact details of any person responsible for dealing with inquiries or complaints about:
  - (i) the individual making the call;
  - (ii) the employer of the individual making the call (if applicable);
  - (iii) the person who caused the call to be made.

## **10 Provision of information during a research call**

### *Application of this section*

- (1) This section only applies to calls that are research calls.

### *Information to be provided as soon as the call starts*

- (2) The caller must give, or cause to be given, the following information to the call recipient as soon as the call starts:
- (a) the given name of the individual making the call (unless the call is made solely using a recorded or synthetic voice);
  - (b) if the individual making the call is not self-employed, the company name or registered business name of the employer of the individual making the call, or if these details do not exist, a name by which the organisation or individual can be readily identified;
  - (c) if the individual making the call is self-employed, their registered business name (if applicable), or if these details do not exist, a name by which the organisation or individual can be readily identified;
  - (d) the purpose of the call.
- (3) Subsection (2) does not apply if:
- (a) the call recipient terminates the call before the information can be provided; or
  - (b) the caller terminates the call within 5 seconds, without speaking to the call recipient.
- (4) If providing the information at paragraphs (2)(b) or (c) would reveal the name of the person that caused the call to be made, the information need not be given at the start of the call provided that the caller gives, or causes to be given, those details to the call recipient:
- (a) immediately, if the call recipient asks for those details; and
  - (b) in any case, prior to the end of the call, unless the call recipient terminates the call before that information can be provided.

### *Information to be provided immediately upon request*

- (5) The caller must give, or cause to be given, the following information to the call recipient immediately after being asked to do so by the call recipient:
- (a) the contact details of the employer of the individual calling, or, if the individual calling is self-employed, their contact details;
  - (b) the name and contact details of the person that caused the call to be made;
  - (c) the name and contact details of any person responsible for dealing with inquiries or complaints about:
    - (i) the individual making the call;
    - (ii) the employer of the individual making the call (if applicable);

- (iii) the person who caused the call to be made.

## 11 Contact details

For sections 9 and 10 *contact details* must include:

- (a) the company name or registered business name, or if these details do not exist, a name by which the organisation or individual can be readily identified; and
- (b) an Australian number suitable for receiving voice calls during normal business hours at the location of the call recipient, and at least one of the following accurate and current addresses:
  - (i) street address;
  - (ii) postal or business address, other than a street address;
  - (iii) email address;
  - (iv) web address that makes available a customer contact facility or at least one of the kinds of address listed in subparagraphs (i), (ii) and (iii).

Note: The Australian number provided can be any number suitable for receiving voice calls during the hours referred to and need not be the number of a telephone from which the caller makes telemarketing calls.

## 12 Calls that involve a recorded or synthetic voice

Where a caller makes, or causes to be made, a call involving recorded or synthetic voices, the caller must ensure that a mechanism is provided during the call to enable the call recipient to request:

- (a) for calls that are not research calls – the information described in subsection 9(4); or
- (b) for research calls – the information described in subsection 10(5).

### *Example*

The call recipient may be advised of the facility to request such information by pressing a button to talk to an operator or to obtain further details about the call, the caller and/or the entity that is causing the call to be made.

## 13 Terminating a call

- (1) A caller must immediately terminate a call, or ensure that a call is immediately terminated, if:
  - (a) the person making the call, receives information that would lead a reasonable person to conclude that the call recipient is not at the usual residential address of the relevant account-holder and has received the call at a time that is a calling time described in subsection 8(1), (2) or (3) at the location at which the call is received; or
  - (b) the call recipient asks for the call to be terminated or otherwise indicates that the call recipient does not want the call to continue.

*Example*

If:

- (a) a call recipient receives a call on a mobile phone in a different time zone to the usual residential address of the relevant account-holder; and
- (b) the caller, or call operator, becomes aware that the day or time at which the call recipient receives the call at that location would be a prohibited day or time at the usual residential address of the relevant account-holder;

the caller must immediately terminate the call or cause the call to be terminated.

- (2) Paragraph (1)(a) does not apply if the call recipient expressly states that he or she would like the call to be continued.

## **14 Enabling calling line identification for a call**

- (1) A caller must ensure that calling line identification is enabled at the time that the caller makes or attempts to make a call, or causes a call to be made or attempted to be made.

*Example*

A caller must not block the transmission of the calling line identification to any calling number display or any calling name display of a call recipient who receives the call.

- (2) Callers must ensure that when a call is made, the number which is transmitted to the calling number display of the receiver terminal is a telephone number which, if called by the call recipient, enables the call recipient to obtain, within a reasonable timeframe:
  - (a) for calls that are not research calls – the information described in paragraphs 9(2)(b), (c), (d) and (e); or
  - (b) for research calls – the information described in paragraphs 10(2)(b), (c) and (d).
- (3) Callers must ensure that any telephone number transmitted to the calling number display of the receiver terminal is reasonably likely to be capable of receiving a return telephone call as contemplated by subsection (2) for a period of at least 30 days from when the call was made to the call recipient.

## **15 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.

*Example*

If a law of a State or Territory prohibits a caller from making a call or causing a call to be made on a day, or at a time, other than a day or time to which subsection 8(1), (2) or (3) applies, that law will continue to operate to that extent, and a caller to whom that law applies must not make a call on that day or at that time.