

Comply Q&A Document Download Series

3. The Privacy Act – A Quick Overview of the Spam Act

The Australian Communications Media Authority (the ACMA) enforces the *Spam Act 2003* and accepts complaints, reports and enquiries about spam in Australia. The Spam Act specifically relates to messages sent to Australians by email, SMS, MMS and instant message that:

- Offer, advertise or promote the supply of goods, services, land or business or investment opportunities
- Advertise or promote a supplier of goods, services, land or a provider of business or investment opportunities
- Assist a person to dishonestly obtain property, commercial advantage or other gain from another person.

These are called commercial electronic messages.

The Spam Act contains three main rules that message senders must comply with - consent, identification and unsubscribe facilities.

Consent

In Australia, commercial electronic messages sent to you must be sent with your consent. The Spam Act provides for two types of consent - express and inferred.

Express consent means you have deliberately and intentionally opted-in to receiving electronic messages from the message sender. Some examples include:

- Ticking the box next to a statement seeking permission to send you marketing messages
- Entering your mobile telephone number on a website to opt-in to receive regular ringtones and games on your phone, then replying to a subsequent SMS to complete the opt-in process
- Entering your email address on a competition entry form and ticking a box next to a statement that says you wish to receive regular updates on the activities of the business
- Contacting a business directly, in writing or on the phone to ask for information to be sent to you on an ongoing basis.

All of these examples demonstrate that you have been informed that providing your consent means you will receive electronic messages and have had the opportunity *not* to receive commercial electronic messages.

Inferred consent relies on a relationship you have with the message sender. The Spam Act provides that consent can be inferred from your conduct or the relationship that a message sender has with

you. The message sender may decide that because you have an existing relationship, you would be interested in receiving electronic messages about similar products and services. For example, if you subscribe to a magazine or newspaper, it could reasonably be inferred from your ongoing relationship with the publisher that you would be amenable to receiving electronic messages promoting other services the publisher may offer.

In some circumstances, message senders may rely on inferred consent if you have consented to your email address or mobile telephone number being on a marketing database that is sold to businesses.

More information about complying with the Spam Act's [consent requirements](#) is available.

Identity

All commercial electronic messages must contain clear and accurate identification of the sender of the message and information on how you can contact the sender. If a message sender does not clearly and accurately identify themselves, the message should be reported to the ACMA.

Understanding identifying information

Identifying information about the message sender may be found in:

- The 'from' field or subject line of an email,
- The body of the message text,
- A website address and/or
- The sender identification of an SMS or MMS message.

If you cannot determine who has sent the message, or feel the sender is not clearly identified, lodge a complaint with the ACMA.

More information about complying with the Spam Act's [identity requirements](#) is available.

Unsubscribe

Finally, all commercial electronic messages must contain an unsubscribe facility. This means there must be instructions on how you can opt-out of receiving messages. Whatever consent you may have given to receiving commercial electronic messages, you can withdraw it if you no longer wish to receive those messages. You should always use the same email address to unsubscribe as that used to subscribe.

A message sender has five working days to act on unsubscribe requests, and they will often be dealt with more quickly.

If a message does not contain an easy to use unsubscribe facility, the message should be reported to the ACMA.

Understanding and using an unsubscribe facility

Some examples of unsubscribe facilities include:

- A sentence at the bottom of an email advising 'to unsubscribe, reply to this email with unsubscribe in the subject line' or 'to unsubscribe, click on this web address and enter your email address'
- A notification in a text message to reply 'stop' to opt-out or 'unsub';
- A notification to 'change your preferences' in your account to opt out of receiving commercial messages.

Important note: The unsubscribe facility should only be used if the message sender is known to you and you have established that the message is legitimate. If you have any doubt or are unsure about the message, delete it without replying or unsubscribing.

All commercial electronic messages must contain notification of how to unsubscribe from receiving further messages. If you receive a commercial electronic message that does not contain notification of how to unsubscribe, or continue to receive messages from a sender you have previously unsubscribed from, lodge a complaint with the ACMA.