

## Business Data Requirements for Email....taken from ACMA Website

### 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. That means you have purposely asked for Information via phone, email or personally. Alternatively you have been contacted by phone, personally or mailed and been asked if you would like Email contact.

Not surprisingly, usually very time consuming and expensive to conduct an express consent.

*That's why most marketers opt for the following.....*

### **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.

### **Inferred consent and conspicuous publications**

Under the Spam Act, you can only infer consent through conspicuous publication if:

- the electronic address is published 'conspicuously'—that is, it is accessible to the public, or a section of the public (for example, it appears on a website or in a telephone directory or brochure)
- the address is not accompanied by a statement that commercial messages are not wanted
- the subject matter of your message is directly related to the principal role or function of the recipient (electronic account-holder).

You might be able to determine the person's role from the context in which their address is published, from the address itself (for example, accounts@business.com) or from accompanying information (for

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example, 'To contact our accounts department, email: numbers@business.com'). If you are not certain that your message relates directly to the role of the intended recipient, and you send it anyway, you may breach the Spam Act.

With conspicuous publication, there must be a strong link between what you are promoting and the recipient's role or line of business. You cannot infer someone's consent just because you believe your product would benefit them.

Examples:

- If you sell IT software to businesses, this does not mean you can send promotional emails to any business with a published email address. However, if a business conspicuously publishes the email address of their IT department, you may be able to infer that account holder's consent, as your message is directly related to their role, function and line of business: IT.
- If your business sells washers for taps, you cannot send commercial emails to all businesses with conspicuously published email addresses on the assumption that they all need washers in their taps. However, you could send your promotional emails to plumbing supplies stores.

All commercial messages sent with inferred consent must also meet the identify and unsubscribe conditions of the Spam Act.

***Inferred consent*** can also rely 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.

### ***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
- the sender identification of an SMS or MMS message.

For more information visit the [Consent page](#).

### **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.

If you are unsure, please contact your legal adviser..ALB provide data in good faith and the understanding our Clients are aware of their legal obligations.