



Spam Act 2003

Australia's anti-spam laws

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Five-Part Strategy

The ACA is fighting spam in five ways:

- 1. Legislation (*Spam Act 2003*)
- 2. Education
- 3. Industry partnerships
- 4. Technological solutions
- 5. International cooperation



Spam Act basics

- Commercial electronic messages (CEMs)

Focus on *sending* of message, not content

Covers email + mobile messaging (SMS, MMS)
but not faxes, pop-ups or telemarketing

Limited exemptions (no Consent or Unsubscribe) for:

- purely factual information
- government, charities, educational institutions, religious organisations and political parties



The Spam Act – 3 key conditions

All commercial electronic messages need:

- **Consent** (opt-in)



- **Identify**



- **Unsubscribe**



+ No address-harvesting software or harvested lists



3 key conditions continued...

1. Consent

- Can be Express or Inferred
- Silence is not consent
- Maintain clean databases

2. Identify

- Who authorised the message to be sent?
- Sender info must remain accurate for 30 days

3. Unsubscribe

- Functional, simple to use, low or no cost
- Honoured within five working days



Consent – the crucial condition

• Express consent

- Person gives clear permission
- E.g. verbal, in writing or by ticking a box

• Inferred consent

1. Strong existing business or other relationship (not a one-off purchase); or
2. 'Conspicuous publication' of work-related electronic address (message must relate directly to person's role or job)



Enforcing the Spam Act

- **Consumer makes spam complaint** (website)
- **ACA analyses complaint**
 - Breach of Act?
 - Australian origin?
- **'Sliding scale' of responses:**
 - Minor breach: warning letter
 - Repeated or serious: fine/undertaking
 - Major spammer: investigation, court, major fine



Enforcement to date...

- 2000 spam complaints (Australian origin)
- 200 warning letters to business
- 7 infringement notices (fines)
- 5 search warrants
- 2 enforceable undertakings
- 1 major investigation
- Several major Australian spammers stopped spamming after Act introduced
- *Video footage*: search warrant being executed



Other anti-spam tactics

- **Education**
 - Consumers: reduce spam, beware of fraud
 - Business: comply, reduce spam, secure servers
- **Industry partnerships**
 - Codes of practice (eMarketers + ISPs)
- **Technological solutions**
 - SpamMatters, 'Secure Your Server', IT forensics
- **International cooperation**
 - MoUs: Asian region, trilateral, LAP
 - Fora: APEC, ASEAN, OECD, ITU



Questions?

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