

Legal compliance in sending electronic communications

Compliance with the *Spam Act 2003* (Cth) (Spam Act)

The University's [Guidelines for Staff on Use of IT Facilities including Email and the Internet](#) (3.4) require all email messages sent from a University email account to comply with the [Spam Act 2003](#).

Section 16(1) of the Spam Act prohibits the sending of 'unsolicited commercial electronic messages'.

Ensuring you comply

To comply with the Spam Act, ensure you:

- have appropriate consent from anyone you plan to send a commercial message to. You cannot use an electronic message to seek consent.
- include identification of who is sending the email
- include a functional way to unsubscribe from receiving future emails

What is a 'commercial' message?

Watch this [short video](#) for an overview.

The Spam Act defines a "commercial electronic message" as one that:

- offers, advertises or promotes the supply of goods, services, land or business or investment opportunities
- advertises or promotes a supplier of goods, services, land or a provider of business or investment opportunities
- helps a person dishonestly obtain property, commercial advantage or other gain from another person

This definition generally covers emails, text messages/SMS and instant messaging practices of a commercial nature.

An electronic message will generally be considered "commercial" in nature if it is motivated by a commercial purpose. Even if the electronic message itself does not necessarily have an obvious commercial purpose, it may still be considered "commercial" if it contains, for example, a link to a web page which is considered to have a commercial purpose (based on presentation and content). This means that any University eDMs which simply link back to the UniSA website could be considered to have provided linking to commercial content.

Overall, sending emails that aim to promote our degrees, facilities, research expertise or other commercial element of University business would fall into the category of being a "commercial electronic message".

Compliance

The University (and its staff) must ensure that, in order to avoid being in breach of the Spam Act, any commercial electronic message sent by the University must meet the following 3 conditions:

- The message must be sent with the recipient's **consent**. This consent can be either express or inferred. You will need to be careful where you get your contact data from to ensure it meets the consent requirements. See the ACMA website for more on [inferred consent and conspicuous publication](#). You cannot infer consent because you believe what you have to offer will be of benefit to the recipient;
- The message must include clear and accurate **identifying** information about who sent it or authorised it to be sent; and
- The message must contain a functional and legitimate **unsubscribe** facility to allow the recipient to "opt out" from receiving messages from that source.

See the [ACMA website](#) for more.

Mandatory unsubscribe facilities

Any unsubscribe facility contained in an electronic message must satisfy the following:

- it must remain functional for at least 30 days after the original message was sent;
- it must allow the unsubscribe message to be sent to the person that authorised the sending of the message;
- unsubscribe instructions must be presented in a clear and conspicuous way;
- a request to unsubscribe must be honoured within five working days; and
- unsubscribing must be at low cost, or no cost, to the user.

Examples of unsubscribe facilities that are clearly worded and easy to use include:

- Email—'Unsubscribe: if you no longer want to receive messages from us, simply reply to this email with the word "unsubscribe" in the subject line.'
- Email—'If you no longer want to receive these messages, please click the "unsubscribe" button below.';
- Email - a link to a website where the person can easily click a button to remove themselves from a mailing list.

Exemption for educational institution

Some messages are exempt or partially exempt from the Spam Act, including those sent by educational institutions such as the University. These do not require the consent of the recipient, nor the provision of an unsubscribe facility. These messages must:

- relate to the goods and services supplied by the University;
- be sent to either a current student, a former student, or members of their household;
- be authorised by the University; and
- identify the University as the person who authorised the message

If these conditions are *not* met, the message will be classified as spam.

These messages must **not** contain any links to other third-party commercial websites, including services provided by affiliated bodies, such as a University Union or bookshop.

Even if all other conditions are met, if the messages are not sent to **current or formers students** of the University, they would **not fall within the relevant exemption** and would **still be considered "spam"** for the purposes of the Spam Act.

Consequences of breach

The Australian Communications and Media Authority (**ACMA**) is responsible for the enforcement of the Spam Act.

In response to a breach of the Spam Act, ACMA can issue a formal warning, accept an enforceable undertaking from the University, issue infringement notices, seek an injunction from the Federal Court and prosecute a person in the Federal Court.

Section 16(1) of the Spam Act (being the general prohibition) is classified as a civil penalty provision. Fines are payable for contraventions of civil penalty provisions and are imposed by the Federal Court.

The maximum penalty payable by the University for a **single contravention** of section 16(1) will be \$21,000, whilst the maximum penalty payable for two or more contraventions of the provision will be \$420,000.

Section 16(1) prohibits sending a single unsolicited commercial electronic message. Therefore, in theory, each time an email is sent to a separate person, the University commits a separate contravention.

Ask your local CMK team if you have any questions about sending commercial electronic messages.