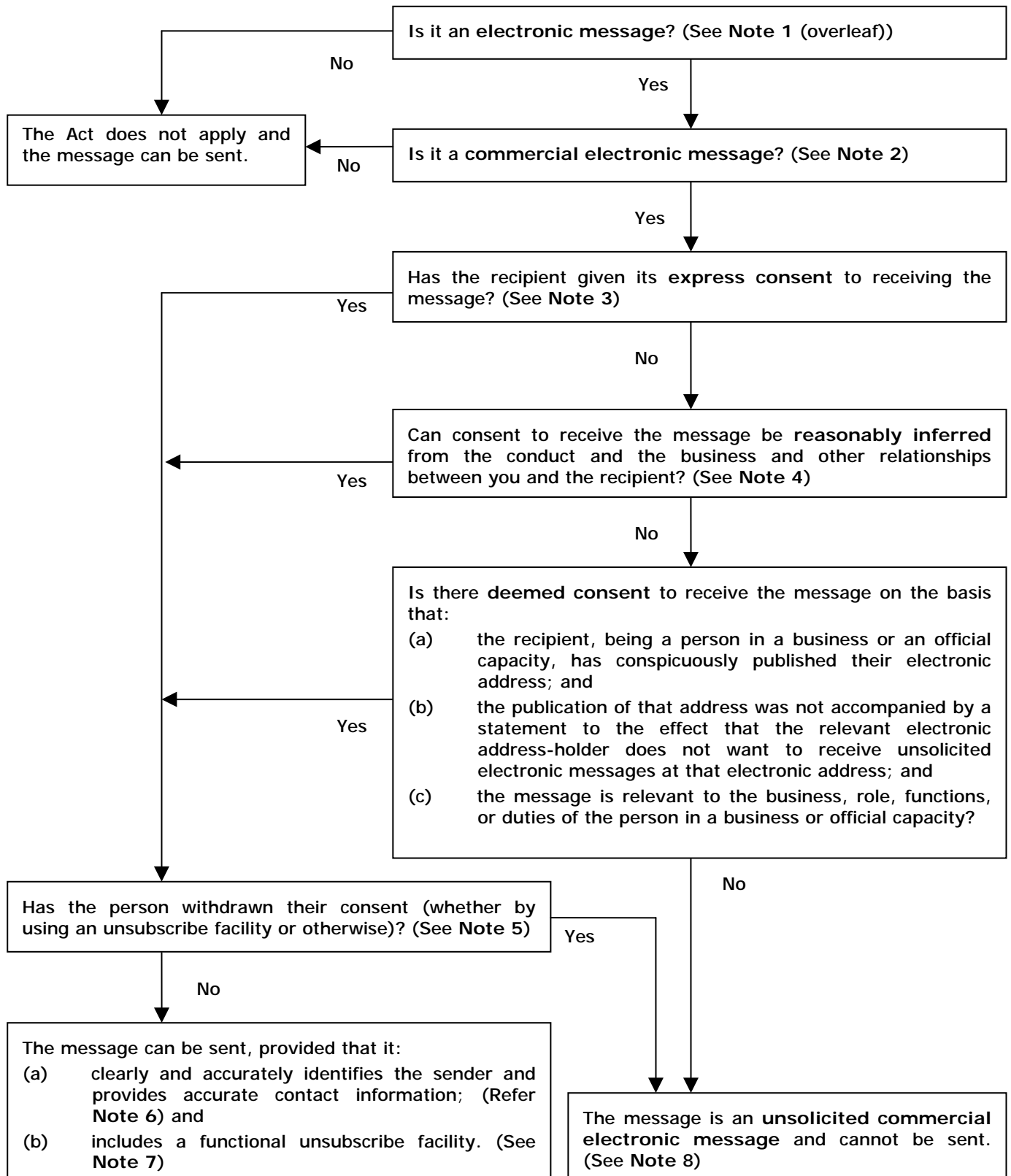




WILL SENDING THIS MESSAGE BREACH THE UNSOLICITED ELECTRONIC
MESSAGES ACT 2007 ("THE ACT")?



NOTES

1. An **electronic message** is a message sent using a telecommunications service to an email address, telephone account, instant messaging address or similar address. Voice telephone calls (including calls using Voice Over IP technology) and facsimiles are expressly excluded from the definition of electronic message.
2. The restrictions in the Act apply only to the sending of a **commercial electronic message**. Broadly, these are messages that market or promote goods, services or one of the other matters listed in the statutory definition in the Act (which is set out below). Any message that contains a link to information (such as your website) that markets or promotes any goods or services will itself constitute a commercial electronic message unless it falls within one of the exceptions in the statutory definition.

Commercial electronic message:

(a) *means an electronic message that:*

(i) *markets or promotes—*

(a) *goods; or*

(b) *services; or*

(c) *land; or*

(d) *an interest in land; or*

(e) *a business or investment opportunity; or*

(ii) *assists or enables a person to obtain dishonestly a financial advantage or gain from another person; or*

(iii) *provides a link, or directs a recipient, to a message that does one or more of the things listed in (a)(i) or (a)(ii) above;*

(b) *but does not include an electronic message that:*

(i) *provides a quote or estimate for the supply of goods or services if that quote or estimate was requested by the recipient; or*

(ii) *facilitates, completes, or confirms a commercial transaction that the recipient previously agreed to enter into with the person who authorised the sending of the message; or*

(iii) *provides warranty information, product recall information, or safety or security information about goods or services used or purchased by the recipient; or*

(iv) *provides notification of factual information about a subscription, membership, account, loan, or similar relationship involving the ongoing purchase or use by the recipient of goods or services offered by the person who authorised the sending of the message, or the recipients ongoing subscription, membership, account, loan, or similar relationship; or*

(v) *provides information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or*

(vi) *delivers goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously entered into with the person who authorised the sending of the message; or*

(vii) *provides the recipient with information about goods or services offered or supplied by a government body or a court or tribunal; or*

(viii) *has any other purpose set out in the regulations.*

3. The Department of Internal Affairs (DIA) (which is responsible for enforcing the Act) interprets the term **express consent** as being a *direct indication from the person you wish to contact that it is okay to send the message(s)*. Express consent can be obtained in a variety of ways, such as filling in a paper form, ticking a box on a website or a phone or face-to-face conversation.
4. Whether there is **inferred consent** for the sending of an electronic message will be a question of fact in each case. The DIA takes the view that *inferred consent is limited in its application*. You should consider the nature of the relationship and whether, based on the nature of your relationship, there is a reasonable expectation on the part of the recipient that messages will be sent. Where the relationship is a business relationship, consent is more likely to be inferred if the message is relevant to the business, role, functions, or duties of the recipient in a business or official capacity.
5. The Act provides that, if a recipient uses an **unsubscribe facility** (see **Note 7**), the recipient's consent to receiving a commercial electronic message from the sender is deemed to have been withdrawn with effect from the day that is 5 working days after the day on which the unsubscribe facility was used.
6. The Act provides that a person must not send, or cause to be sent, a commercial electronic message that has a **New Zealand link** unless:
 - 6.1. the message clearly and accurately identifies the person who authorised the sending of the message; and
 - 6.2. the message includes accurate information about how the recipient can readily contact that person; and
 - 6.3. the information referred to in paragraph (b) is reasonably likely to be valid for at least 30 days after the message is sent.Any message sent by a person in New Zealand, or from a computer or server located in New Zealand, will have a **New Zealand link** for the purposes of the Act.
7. A person must not send, or cause to be sent, a commercial electronic message that has a **New Zealand link** unless the message includes a functional **unsubscribe facility** that the recipient may use to instruct the person who authorised the sending of the principal message (the "sender") that no further commercial electronic messages from or authorised by the sender should be sent to the electronic address at which the message was received. The unsubscribe facility can be as simple as a line in your message saying, 'If you do not wish to receive future messages, send a reply with UNSUBSCRIBE' in the subject line.
8. Sending an unsolicited commercial electronic message in contravention of the Act will constitute a **civil liability event**. A civil liability event entitles any person affected by the message to apply to the courts for an injunction or for compensation or damages. The DIA may issue a formal warning or an civil infringement notice imposing a fine of NZ\$2,000, or apply to the court for compensation or damages, or for the imposition of a pecuniary penalty of up to NZ\$200,000 in respect of an individual or NZ\$500,000 in respect of an organisation.