



Do Not Call Register Act 2006

No. 88, 2006

An Act to establish a Do Not Call Register, and for other purposes

Contents

| | |
|---|----|
| Part 1—Introduction | 1 |
| 1 Short title | 1 |
| 2 Commencement | 2 |
| 3 Simplified outline | 3 |
| 4 Definitions | 3 |
| 5 Telemarketing calls | 8 |
| 6 Continuity of partnerships | 9 |
| 7 Crown to be bound | 9 |
| 8 Extension to external Territories | 10 |
| 9 Extra-territorial application | 10 |
| Part 2—Rules about making telemarketing calls | 11 |
| 10 Simplified outline | 11 |
| 11 Unsolicited telemarketing calls must not be made to a number registered on the Do Not Call Register | 11 |
| 12 Agreements for the making of telemarketing calls must require compliance with this Act | 13 |
| Part 3—Do Not Call Register | 15 |
| 13 Do Not Call Register | 15 |
| 14 Eligibility for registration | 15 |
| 15 Applications for registration | 15 |
| 16 Registration | 16 |
| 17 Duration of registration | 17 |
| 18 Administration of the Do Not Call Register—determinations | 17 |
| 19 Access to the Do Not Call Register | 17 |
| 20 Access—determinations | 18 |
| 21 Access—fees | 19 |
| 22 Application of the <i>Privacy Act 1988</i> to the contracted service provider | 20 |
| Part 4—Civil penalties | 21 |
| 23 Simplified outline | 21 |
| 24 Civil penalty orders | 21 |
| 25 Maximum penalties for contravention of civil penalty provisions | 22 |
| 26 2 or more proceedings may be heard together | 25 |
| 27 Time limit for application for an order | 25 |
| 28 Civil evidence and procedure rules for civil penalty orders | 25 |
| 29 Criminal proceedings not to be brought for contravention of civil penalty provisions | 25 |

| | | |
|--|--|-----------|
| 30 | Ancillary orders—compensation | 25 |
| 31 | Ancillary orders—recovery of financial benefit | 26 |
| 32 | Schedule 3 (infringement notices) | 27 |
| Part 5—Injunctions | | 28 |
| 33 | Simplified outline | 28 |
| 34 | Injunctions | 28 |
| 35 | Interim injunctions..... | 29 |
| 36 | Discharge etc. of injunctions | 29 |
| 37 | Certain limits on granting injunctions not to apply..... | 29 |
| 38 | Other powers of the Federal Court or the Federal Magistrates Court unaffected | 30 |
| Part 6—Miscellaneous | | 31 |
| 39 | Nominees..... | 31 |
| 40 | Formal warnings—breach of civil penalty provision..... | 31 |
| 41 | Additional ACMA functions | 31 |
| 42 | Operation of State and Territory laws..... | 32 |
| 43 | Implied freedom of political communication..... | 32 |
| 44 | Giving effect to international conventions..... | 32 |
| 45 | Review of operation of Act | 32 |
| 46 | Regulations..... | 33 |
| Schedule 1—Designated telemarketing calls | | 34 |
| 1 | Object | 34 |
| 2 | Government bodies, religious organisations and charities | 34 |
| 3 | Political parties, independent members of parliament, candidates etc. | 34 |
| 4 | Educational institutions | 36 |
| 5 | Regulations..... | 38 |
| 6 | Authorising the making of telemarketing calls | 38 |
| 7 | Extended meaning of <i>employee</i> and <i>employer</i> | 38 |
| Schedule 2—Consent | | 41 |
| 1 | Object | 41 |
| 2 | Basic definition..... | 41 |
| 3 | Duration of express consent | 41 |
| 4 | Consent may not be inferred from the publication of a telephone number | 41 |
| 5 | Regulations about consent | 42 |
| Schedule 3—Infringement notices | | 43 |
| 1 | Object | 43 |

| | | |
|---|---|----|
| 2 | When an infringement notice can be given..... | 43 |
| 3 | Matters to be included in an infringement notice..... | 43 |
| 4 | Amount of penalty | 44 |
| 5 | Withdrawal of an infringement notice | 46 |
| 6 | What happens if the penalty is paid | 47 |
| 7 | Effect of this Schedule on civil proceedings..... | 47 |
| 8 | Appointment of authorised officer..... | 47 |
| 9 | Regulations..... | 48 |



Do Not Call Register Act 2006

No. 88, 2006

An Act to establish a Do Not Call Register, and for other purposes

[Assented to 30 June 2006]

The Parliament of Australia enacts:

Part 1—Introduction

1 Short title

This Act may be cited as the *Do Not Call Register Act 2006*.

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|--|---|----------------------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 30 June 2006 |
| 2. Sections 3 to 9 | The day on which this Act receives the Royal Assent. | 30 June 2006 |
| 3. Part 2 | A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period. | 31 May 2007 (see F2007L01114) |
| 4. Part 3 | The day on which this Act receives the Royal Assent. | 30 June 2006 |
| 5. Parts 4 and 5 | At the same time as the provision(s) covered by table item 3. | 31 May 2007 |
| 6. Sections 39 and 40 | At the same time as the provision(s) covered by table item 3. | 31 May 2007 |
| 7. Section 41 | The day on which this Act receives the Royal Assent. | 30 June 2006 |
| 8. Sections 42 to 45 | At the same time as the provision(s) covered by table item 3. | 31 May 2007 |
| 9. Section 46 | The day on which this Act receives the Royal Assent. | 30 June 2006 |
| 10. Schedules 1, 2 and 3 | At the same time as the provision(s) covered by table item 3. | 31 May 2007 |

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Simplified outline

The following is a simplified outline of this Act:

- Unsolicited telemarketing calls must not be made to a number registered on the Do Not Call Register.
- The main remedies for breaches of this Act are civil penalties and injunctions.

Note: The *Telecommunications Act 1997* contains additional provisions about telemarketing calls. Those provisions include Part 6 (industry codes and standards), Part 26 (investigations), Part 27 (information-gathering powers) and Part 31A (enforceable undertakings).

4 Definitions

In this Act:

account includes:

- (a) a free account; and
- (b) a pre-paid account; and
- (c) anything that may reasonably be regarded as the equivalent of an account.

ACMA means the Australian Communications and Media Authority.

acquire, when used in relation to goods or services, has the same meaning as in the *Trade Practices Act 1974*.

agency includes:

- (a) an armed force; and
- (b) a police force.

Section 4

Australia, when used in a geographical sense, includes the eligible Territories.

Australian number means a number that is:

- (a) specified in the numbering plan referred to in section 455 of the *Telecommunications Act 1997*; and
- (b) for use in connection with the supply of carriage services to the public in Australia (within the meaning of that section).

authorise, when used in relation to the making of a telemarketing call, has a meaning affected by clause 6 of Schedule 1.

authorised officer means:

- (a) the Chair of the ACMA; or
- (b) a member of the staff of the ACMA appointed under clause 8 of Schedule 3.

business includes a venture or concern in trade or commerce, whether or not conducted on a regular, repetitive or continuous basis.

candidate means a person who has been nominated as a candidate under:

- (a) the *Commonwealth Electoral Act 1918*; or
- (b) a law of a State or Territory that deals with electoral matters.

carriage service has the same meaning as in the *Telecommunications Act 1997*.

cause has a meaning affected by subsection 11(9).

civil contravention means a contravention of a civil penalty provision.

civil penalty order means an order under subsection 24(1).

civil penalty provision means any of the following provisions:

- (a) subsection 11(1);
- (b) subsection 11(7);
- (c) subsection 12(1);
- (d) subsection 12(2);

(e) a provision of the regulations that is declared to be a civil penalty provision in accordance with paragraph 44(2)(c).

consent, when used in relation to the making of a telemarketing call, has the meaning given by Schedule 2.

contracted service provider means the person (if any) who keeps the Do Not Call Register as mentioned in paragraph 13(1)(b).

data processing device has the same meaning as in the *Telecommunications Act 1997*.

dealing with, in relation to a telemarketing call, includes retrieving the call from a voicemail system or similar system.

designated telemarketing call has the meaning given by Schedule 1.

director includes a member of the governing body of an organisation.

Do Not Call Register means the register kept under section 13.

educational institution includes:

- (a) a pre-school; and
- (b) a school; and
- (c) a college; and
- (d) a university.

eligible Territory means:

- (a) the Territory of Christmas Island; or
- (b) the Territory of Cocos (Keeling) Islands; or
- (c) an external Territory prescribed for the purposes of section 8.

employee has a meaning affected by clause 7 of Schedule 1.

employer has a meaning affected by clause 7 of Schedule 1.

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

Federal Court means the Federal Court of Australia.

Section 4

goods has the same meaning as in the *Trade Practices Act 1974*.

government body means:

- (a) a department of the Commonwealth, a State or a Territory; or
- (b) an agency, authority or instrumentality of the Commonwealth, a State or a Territory; or
- (c) a department of the government of a foreign country; or
- (d) an agency, authority or instrumentality of the government of a foreign country; or
- (e) a department of the government of a part of a foreign country; or
- (f) an agency, authority or instrumentality of the government of a part of a foreign country.

infringement notice means an infringement notice under clause 2 of Schedule 3.

international convention means:

- (a) a convention to which Australia is a party; or
- (b) an agreement between Australia and a foreign country.

investment means any mode of application of money or other property for the purpose of gaining a return (whether by way of income, capital gain or any other form of return).

make includes attempt to make.

mistake means reasonable mistake of fact.

nominee has the meaning given by section 39.

organisation includes:

- (a) a body corporate; and
- (b) a partnership; and
- (c) a government body; and
- (d) a court or tribunal; and
- (e) an unincorporated body or association.

Express references in this Act to organisations do not imply that references in this Act to persons do not include bodies politic or corporate.

Note: Paragraph 22(1)(a) of the *Acts Interpretation Act 1901* provides that **person** includes a body politic or corporate as well as an individual.

penalty unit has the meaning given by section 4AA of the *Crimes Act 1914*.

person includes a partnership.

Note: For treatment of partnerships, see section 585 of the *Telecommunications Act 1997*.

publish includes:

- (a) publish on the Internet; and
- (b) publish to the public or a section of the public.

registered political party means a political party, or a branch or division of a political party, that is registered under:

- (a) the *Commonwealth Electoral Act 1918*; or
- (b) a law of a State or Territory that deals with electoral matters.

relevant telephone account-holder, in relation to a telephone number, means:

- (a) if an individual or organisation is solely responsible for the relevant telephone account—the individual or organisation; or
- (b) if 2 or more individuals and/or organisations are jointly responsible for the relevant telephone account—any of those individuals or organisations.

services has the same meaning as in the *Trade Practices Act 1974*.

supply:

- (a) when used in relation to goods or services—has the same meaning as in the *Trade Practices Act 1974*; or
- (b) when used in relation to land—includes transfer; or
- (c) when used in relation to an interest in land—includes transfer or create.

telemarketing call has the meaning given by section 5.

voice call means:

- (a) a voice call within the ordinary meaning of that expression; or

Section 5

- (b) a call that involves a recorded or synthetic voice; or
- (c) if a call covered by paragraph (a) or (b) is not practical for a particular recipient with a disability (for example, because the recipient has a hearing impairment)—a call that is equivalent to a call covered by either of those paragraphs; whether or not the recipient responds by way of pressing buttons on a telephone handset or similar thing.

5 Telemarketing calls

Basic definition

- (1) For the purposes of this Act, a **telemarketing call** is a voice call to a telephone number, where, having regard to:
- (a) the content of the call; and
 - (b) the presentational aspects of the call; and
 - (c) the content that can be obtained using the telephone numbers, URLs or contact information (if any) mentioned in the call; and
 - (d) if the telephone number from which the call is made is disclosed to the recipient (whether by calling line identification or otherwise)—the content (if any) that can be obtained by calling that telephone number;
- it would be concluded that the purpose, or one of the purposes, of the call is:
- (e) to offer to supply goods or services; or
 - (f) to advertise or promote goods or services; or
 - (g) to advertise or promote a supplier, or prospective supplier, of goods or services; or
 - (h) to offer to supply land or an interest in land; or
 - (i) to advertise or promote land or an interest in land; or
 - (j) to advertise or promote a supplier, or prospective supplier, of land or an interest in land; or
 - (k) to offer to provide a business opportunity or investment opportunity; or
 - (l) to advertise or promote a business opportunity or investment opportunity; or

- (m) to advertise or promote a provider, or prospective provider, of a business opportunity or investment opportunity; or
 - (n) to solicit donations; or
 - (o) a purpose specified in the regulations.
- (2) For the purposes of paragraphs (1)(e) to (m), it is immaterial whether the goods, services, land, interest or opportunity exists.
 - (3) For the purposes of paragraphs (1)(e) to (m), it is immaterial whether it is lawful to acquire the goods, services, land or interest or take up the opportunity.
 - (4) Either of the following:
 - (a) the supplier or prospective supplier mentioned in paragraph (1)(g) or (j);
 - (b) the provider or prospective provider mentioned in paragraph (1)(m);may be the individual or organisation who made the call or authorised the making of the call.
 - (5) Paragraphs (1)(e) to (o) are to be read independently of each other.
 - (6) Subsection (1) has effect subject to subsection (7).

Excluded calls—regulations

- (7) The regulations may provide that a specified kind of voice call is not a *telemarketing call* for the purposes of this Act.

6 Continuity of partnerships

For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

7 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

Section 8

- (3) The protection in subsection (2) does not apply to an authority of the Crown.

8 Extension to external Territories

This Act extends to:

- (a) the Territory of Christmas Island; and
- (b) the Territory of Cocos (Keeling) Islands; and
- (c) such other external Territories (if any) as are prescribed.

9 Extra-territorial application

Unless the contrary intention appears, this Act extends to acts, omissions, matters and things outside Australia.

Part 2—Rules about making telemarketing calls

10 Simplified outline

The following is a simplified outline of this Part:

- Unsolicited telemarketing calls must not be made to a number registered on the Do Not Call Register.
- Agreements for the making of telemarketing calls must require compliance with this Act.

11 Unsolicited telemarketing calls must not be made to a number registered on the Do Not Call Register

- (1) A person must not make, or cause to be made, a telemarketing call to an Australian number if:
- (a) the number is registered on the Do Not Call Register; and
 - (b) the call is not a designated telemarketing call.

Note: For *designated telemarketing call*, see Schedule 1.

- (2) Subsection (1) does not apply if:
- (a) the relevant telephone account-holder; or
 - (b) a nominee of the relevant telephone account-holder; consented to the making of the call.

Note 1: For the meaning of *consent*, see Schedule 2.

Note 2: For the meaning of *nominee*, see section 39.

- (3) Subsection (1) does not apply if:
- (a) the number was included on a list that was submitted by the person under subsection 19(1); and
 - (b) during the 30-day period ending at the end of the day on which the call was made:
 - (i) the person received information under subparagraph 19(2)(d)(i) in response to the submission of the list, but

Section 11

that information did not state that the number was registered on the Do Not Call Register; or

- (ii) the person was informed under subparagraph 19(2)(d)(ii), in response to the submission of the list, that the number was not registered on the Do Not Call Register; or
- (iii) under subsection 19(3), in response to the submission of the list, the person was given a list that included the number.

For the purposes of this subsection, a list may consist of a single telephone number.

Note: Section 19 deals with access to the Do Not Call Register.

- (4) Subsection (1) does not apply if the person made the call, or caused the call to be made, by mistake.
- (5) Subsection (1) does not apply if the person took reasonable precautions, and exercised due diligence, to avoid the contravention.
- (6) A person who wishes to rely on subsection (2), (3), (4) or (5) bears an evidential burden in relation to that matter.

Ancillary contraventions

- (7) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (1); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
 - (d) conspire with others to effect a contravention of subsection (1).

Civil penalty provisions

- (8) Subsections (1) and (7) are ***civil penalty provisions***.

Note: Part 4 provides for pecuniary penalties for breaches of civil penalty provisions.

Extended meaning of cause

- (9) For the purposes of this section, if:
- (a) a person (the *first person*) enters into a contract or arrangement, or arrives at an understanding, with another person; and
 - (b) under the contract, arrangement or understanding, the other person undertakes to make, or to cause any or all of the employees or agents of the other person to make, telemarketing calls; and
 - (c) the other person, or an employee or agent of the other person, gives effect to the contract, arrangement or understanding by making a telemarketing call;
- the first person is taken to have *caused* the telemarketing call to be made.
- (10) Paragraph (9)(a) applies to contracts or arrangements entered into, or understandings arrived at, before, at or after the commencement of this section.

12 Agreements for the making of telemarketing calls must require compliance with this Act

- (1) A person (the *first person*) must not enter into a contract or arrangement, or arrive at an understanding, with another person, if:
- (a) under the contract, arrangement or understanding, the other person undertakes to:
 - (i) make telemarketing calls; or
 - (ii) cause any or all of the employees or agents of the other person to make telemarketing calls; and
 - (b) there is a reasonable likelihood that some or all of those calls will be made to telephone numbers that, under section 14, are eligible to be entered on the Do Not Call Register; and
 - (c) the contract, arrangement or understanding does not contain an express provision to the effect that the other person will:
 - (i) in any case—comply with this Act; and
 - (ii) if subparagraph (a)(ii) applies—take all reasonable steps to ensure that the employees and agents of the other person comply with this Act;

Section 12

in relation to the making of telemarketing calls covered by the contract, arrangement or understanding.

Ancillary contraventions

- (2) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
 - (d) conspire with others to effect a contravention of subsection (1).

Civil penalty provisions

- (3) Subsections (1) and (2) are ***civil penalty provisions***.

Note: Part 4 provides for pecuniary penalties for breaches of civil penalty provisions.

Validity of contracts, arrangements or understandings

- (4) A failure to comply with subsection (1) does not affect the validity of any contract, arrangement or understanding.

Part 3—Do Not Call Register

13 Do Not Call Register

- (1) The ACMA must:
 - (a) keep; or
 - (b) arrange for another person (the *contracted service provider*) to keep, on behalf of the ACMA;
a register of telephone numbers for the purposes of this Act.
- (2) The register is to be known as the Do Not Call Register.
- (3) The register is to be kept in electronic form.
- (4) The register is not a legislative instrument.
- (5) The ACMA must begin to comply with subsection (1) as soon as practicable after the commencement of this section.
- (6) For the purposes of the *Privacy Act 1988*, the primary purpose of the Do Not Call Register is to facilitate the prohibition, under section 11, of unsolicited telemarketing calls (other than designated telemarketing calls).

14 Eligibility for registration

A telephone number is eligible to be entered on the Do Not Call Register if:

- (a) it is an Australian number; and
- (b) it is used or maintained exclusively or primarily for private or domestic purposes; and
- (c) it is not used or maintained exclusively for transmitting and/or receiving faxes.

15 Applications for registration

An application for a telephone number to be entered on the Do Not Call Register:

Section 16

- (a) may be made by:
 - (i) the relevant telephone account-holder; or
 - (ii) a nominee of the relevant telephone account-holder; and
- (b) is to be made to:
 - (i) if the Do Not Call Register is kept by the ACMA—the ACMA; or
 - (ii) if the Do Not Call Register is kept by the contracted service provider—the contracted service provider on behalf of the ACMA; and
- (c) is to be in the applicable form (if any) specified in a determination under subsection 18(1); and
- (d) is to be made in the applicable manner (if any) specified in a determination under subsection 18(1).

Note: For the meaning of *nominee*, see section 39.

16 Registration

If:

- (a) an application is made for a telephone number to be entered on the Do Not Call Register; and
- (b) the applicant satisfies:
 - (i) if the Do Not Call Register is kept by the ACMA—the ACMA; or
 - (ii) if the Do Not Call Register is kept by the contracted service provider—the contracted service provider on behalf of the ACMA;

that the number is eligible to be entered on the Do Not Call Register;

then:

- (c) if the Do Not Call Register is kept by the ACMA—the ACMA; or
- (d) if the Do Not Call Register is kept by the contracted service provider—the contracted service provider on behalf of the ACMA;

must enter the number on the Do Not Call Register.

17 Duration of registration

- (1) The registration of a telephone number on the Do Not Call Register:
 - (a) takes effect when it is entered on the Do Not Call Register; and
 - (b) remains in force for 3 years, unless sooner removed from the Do Not Call Register in accordance with a determination under subsection 18(1).
- (2) If the registration of a telephone number on the Do Not Call Register ceases to be in force, this Act does not prevent the number from being re-registered on the Do Not Call Register.
- (3) If a telephone number is removed from the Do Not Call Register, this Act does not prevent the number from being re-registered on the Do Not Call Register.

18 Administration of the Do Not Call Register—determinations

- (1) The ACMA may make a determination that makes provision for and in relation to any or all of the following:
 - (a) the form of applications for telephone numbers to be entered on the Do Not Call Register;
 - (b) the manner in which such applications are to be made;
 - (c) the manner in which entries are to be made on the Do Not Call Register;
 - (d) the correction of entries in the Do Not Call Register;
 - (e) the removal of entries from the Do Not Call Register;
 - (f) any other matter relating to the administration or operation of the Do Not Call Register.
- (2) A determination under subsection (1) is a legislative instrument.
- (3) A determination under subsection (1) is to be an instrument of a legislative character.

19 Access to the Do Not Call Register

- (1) A person (the *access-seeker*) who wishes to access the Do Not Call Register may submit a list of telephone numbers to:
-

Section 20

- (a) if the Do Not Call Register is kept by the ACMA—the ACMA; or
- (b) if the Do Not Call Register is kept by the contracted service provider—the contracted service provider on behalf of the ACMA.

For this purpose, a list may consist of a single telephone number.

- (2) If the access-seeker has paid the applicable fee (if any) determined under subsection 21(1), then:

- (a) if the Do Not Call Register is kept by the ACMA—the ACMA; or
- (b) if the Do Not Call Register is kept by the contracted service provider—the contracted service provider on behalf of the ACMA;

must:

- (c) check the telephone numbers on the access-seeker's list against the telephone numbers registered on the Do Not Call Register; and
- (d) either:
 - (i) inform the access-seeker which numbers (if any) on the access-seeker's list are registered on the Do Not Call Register; or
 - (ii) inform the access-seeker which numbers (if any) on the access-seeker's list are not registered on the Do Not Call Register.

- (3) The ACMA, or the contracted service provider, as the case requires, may comply with subparagraph (2)(d)(ii) by returning the access-seeker's list, modified by the deletion of the numbers (if any) registered on the Do Not Call Register.

- (4) A submission under subsection (1) is to be made in the applicable manner (if any) specified in a determination under subsection 20(1).

20 Access—determinations

- (1) The ACMA may make a determination that makes provision for and in relation to any or all of the following:

- (a) the manner in which a submission under subsection 19(1) is to be made;
- (b) the manner in which information under paragraph 19(2)(d) is to be given;
- (c) the manner in which a list is to be returned under subsection 19(3);
- (d) any other matter relating to access to the Do Not Call Register.

Determinations

- (2) A determination under subsection (1) is a legislative instrument.
- (3) A determination under subsection (1) is to be an instrument of a legislative character.

21 Access—fees

- (1) The ACMA may make a determination that makes provision for and in relation to either or both of the following:
 - (a) fees payable for services provided under subsection 19(2) or (3);
 - (b) refunds of fees for those services.

Exemptions

- (2) The ACMA may make a determination that makes provision for and in relation to exemptions from fees for services provided under subsection 19(2) or (3).
- (3) The Minister may make a determination that makes provision for and in relation to exemptions from fees for services provided under subsection 19(2) or (3).
- (4) If one or more determinations are in force under subsection (3), a determination under subsection (2) has no effect except to the extent to which it makes provision for and in relation to exemptions that are in addition to exemptions dealt with by the determinations under subsection (3).

Section 22

Other matters

- (5) A fee must not be such as to amount to taxation.
- (6) A fee is payable to the ACMA on behalf of the Commonwealth.
- (7) Section 60 of the *Australian Communications and Media Authority Act 2005* does not apply in relation to services provided under subsection 19(2) or (3).

Note: Section 60 of the *Australian Communications and Media Authority Act 2005* deals with charges relating to the ACMA's expenses.

Determinations

- (8) A determination under subsection (1), (2) or (3) is a legislative instrument.
- (9) A determination under subsection (1), (2), or (3) is to be an instrument of a legislative character.

22 Application of the *Privacy Act 1988* to the contracted service provider

- (1) For the purposes of the *Privacy Act 1988*, if the Do Not Call Register is kept by the contracted service provider under a contract:
 - (a) the keeping of the Do Not Call Register by the contracted service provider; and
 - (b) the operation of the Do Not Call Register by the contracted service provider; and
 - (c) the performance of a function, or the exercise of a power, by the contracted service provider under:
 - (i) this Part; or
 - (ii) a determination under this Part;is taken to be the provision of a service to the ACMA under the contract.
- (2) Subsection (1) is enacted for the avoidance of doubt.

Part 4—Civil penalties

23 Simplified outline

The following is a simplified outline of this Part:

- Pecuniary penalties are payable for contraventions of civil penalty provisions.
- Proceedings for the recovery of penalties are to be instituted in the Federal Court or the Federal Magistrates Court.

Note: Schedule 3 sets up a system of infringement notices relating to contraventions of civil penalty provisions.

24 Civil penalty orders

- (1) If the Federal Court or the Federal Magistrates Court is satisfied that a person has contravened a civil penalty provision, the court may, on the application of the ACMA, order the person to pay to the Commonwealth a pecuniary penalty.
- (2) An order under subsection (1) is to be known as a *civil penalty order*.

Determining pecuniary penalty

- (3) In determining the pecuniary penalty, the court must have regard to all relevant matters, including:
 - (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
 - (c) the circumstances in which the contravention took place; and
 - (d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct; and

Section 25

- (e) if the court considers that it is appropriate to do so—whether the person has previously been found by a court in a foreign country to have engaged in any similar conduct.

Civil enforcement of penalty

- (4) The pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

25 Maximum penalties for contravention of civil penalty provisions

- (1) The maximum penalty payable under subsection 24(1) by a person in respect of a contravention of a civil penalty provision depends on:
 - (a) whether the person has a prior record in relation to the civil penalty provision (see subsection (2)); and
 - (b) whether the person is a body corporate; and
 - (c) whether the civil penalty provision is subsection 11(1) or (7).

Prior record

- (2) If:
 - (a) on a particular day (the **first day**), the Federal Court or the Federal Magistrates Court makes a civil penalty order against a person in respect of a contravention of a particular civil penalty provision; and
 - (b) that is the first occasion on which a court makes a civil penalty order against the person in respect of a contravention of the civil penalty provision;then, for the purposes of determining the penalty payable under subsection 24(1) by the person in respect of a contravention of the civil penalty provision that occurs after the first day, the person has a **prior record** in relation to the civil penalty provision.

Maximum penalty payable by body corporate—no prior record

- (3) If a body corporate does not have a prior record in relation to a particular civil penalty provision:
- (a) the penalty payable under subsection 24(1) by the body corporate in respect of a contravention of the civil penalty provision must not exceed:
 - (i) if the civil penalty provision is subsection 11(1) or (7)—100 penalty units; or
 - (ii) in any other case—50 penalty units; and
 - (b) if the Federal Court or the Federal Magistrates Court finds that the body corporate has, on a particular day, committed 2 or more contraventions of the civil penalty provision—the total of the penalties payable under subsection 24(1) by the body corporate in respect of those contraventions must not exceed:
 - (i) if the civil penalty provision is subsection 11(1) or (7)—2,000 penalty units; or
 - (ii) in any other case—1,000 penalty units.

Maximum penalty payable by a person other than a body corporate—no prior record

- (4) If a person other than a body corporate does not have a prior record in relation to a particular civil penalty provision:
- (a) the penalty payable under subsection 24(1) by the person in respect of a contravention of the civil penalty provision must not exceed:
 - (i) if the civil penalty provision is subsection 11(1) or (7)—20 penalty units; or
 - (ii) in any other case—10 penalty units; and
 - (b) if the Federal Court or the Federal Magistrates Court finds that the person has, on a particular day, committed 2 or more contraventions of the civil penalty provision—the total of the penalties payable under subsection 24(1) by the person in respect of those contraventions must not exceed:
 - (i) if the civil penalty provision is subsection 11(1) or (7)—400 penalty units; or
 - (ii) in any other case—200 penalty units.

Section 25

Maximum penalty payable by body corporate—prior record

- (5) If a body corporate has a prior record in relation to a particular civil penalty provision:
- (a) the penalty payable under subsection 24(1) by the body corporate in respect of a contravention of the civil penalty provision must not exceed:
 - (i) if the civil penalty provision is subsection 11(1) or (7)—500 penalty units; or
 - (ii) in any other case—250 penalty units; and
 - (b) if the Federal Court or the Federal Magistrates Court finds that the body corporate has, on a particular day, committed 2 or more contraventions of the civil penalty provision—the total of the penalties payable under subsection 24(1) by the body corporate in respect of those contraventions must not exceed:
 - (i) if the civil penalty provision is subsection 11(1) or (7)—10,000 penalty units; or
 - (ii) in any other case—5,000 penalty units.

Maximum penalty payable by a person other than a body corporate—prior record

- (6) If a person other than a body corporate has a prior record in relation to a particular civil penalty provision:
- (a) the penalty payable under subsection 24(1) by the person in respect of a contravention of the civil penalty provision must not exceed:
 - (i) if the civil penalty provision is subsection 11(1) or (7)—100 penalty units; or
 - (ii) in any other case—50 penalty units; and
 - (b) if the Federal Court or the Federal Magistrates Court finds that the person has, on a particular day, committed 2 or more contraventions of the civil penalty provision—the total of the penalties payable under subsection 24(1) by the person in respect of those contraventions must not exceed:
 - (i) if the civil penalty provision is subsection 11(1) or (7)—2,000 penalty units; or
 - (ii) in any other case—1,000 penalty units.

26 2 or more proceedings may be heard together

The Federal Court or the Federal Magistrates Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

27 Time limit for application for an order

Proceedings for a civil penalty order may be started no later than 6 years after the contravention.

28 Civil evidence and procedure rules for civil penalty orders

The Federal Court or the Federal Magistrates Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

29 Criminal proceedings not to be brought for contravention of civil penalty provisions

Criminal proceedings do not lie against a person only because the person has contravened a civil penalty provision.

30 Ancillary orders—compensation

(1) If:

- (a) in one or more proceedings under section 24, the Federal Court or the Federal Magistrates Court finds that a person (the *perpetrator*) has contravened one or more civil penalty provisions; and
- (b) the court is satisfied that another person (the *victim*) has suffered loss or damage as a result of any or all of those contraventions;

the court may, on the application of the ACMA or the victim, make an order that the court considers appropriate directing the perpetrator to compensate the victim.

- (2) In determining whether a person (the *victim*) has suffered loss or damage as a result of one or more contraventions by another person of section 11 in relation to the making of one or more

Section 31

telemarketing calls, and in assessing the amount of compensation payable, the court may have regard to the following:

- (a) the extent to which any expenses incurred by the victim are attributable to dealing with the calls;
 - (b) the effect of dealing with the calls on the victim's ability to carry on business or other activities;
 - (c) any damage to the reputation of the victim's business that is attributable to dealing with the calls;
 - (d) any loss of business opportunities suffered by the victim as a result of dealing with the calls;
 - (e) any other matters that the court considers relevant.
- (3) The Federal Court or the Federal Magistrates Court may make an order under subsection (1), whether or not it makes a civil penalty order.
 - (4) An application under subsection (1) may be made at any time within 6 years after the contravention concerned.

31 Ancillary orders—recovery of financial benefit

- (1) If:
 - (a) in one or more proceedings under section 24, the Federal Court or the Federal Magistrates Court finds that a person has contravened one or more civil penalty provisions; and
 - (b) the court is satisfied that the person has obtained (whether directly or indirectly) a financial benefit that is reasonably attributable to any or all of those contraventions;the court may, on the application of the ACMA, make an order directing the person to pay to the Commonwealth an amount up to the amount of the financial benefit.
- (2) The Federal Court or the Federal Magistrates Court may make an order under subsection (1), whether or not it makes a civil penalty order.
- (3) An application under subsection (1) may be made at any time within 6 years after the contravention concerned.

32 Schedule 3 (infringement notices)

Schedule 3 has effect.

Part 5—Injunctions

33 Simplified outline

The following is a simplified outline of this Part:

- The Federal Court or the Federal Magistrates Court may grant injunctions in relation to contraventions of civil penalty provisions.

34 Injunctions

Restraining injunctions

- (1) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of a civil penalty provision, the Federal Court or the Federal Magistrates Court may, on the application of the ACMA, grant an injunction:
 - (a) restraining the person from engaging in the conduct; and
 - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

Performance injunctions

- (2) If:
 - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of a civil penalty provision;the Federal Court or the Federal Magistrates Court may, on the application of the ACMA, grant an injunction requiring the person to do that act or thing.

35 Interim injunctions

Grant of interim injunction

- (1) If an application is made to the Federal Court or the Federal Magistrates Court for an injunction under section 34, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

No undertakings as to damages

- (2) The Federal Court or the Federal Magistrates Court is not to require an applicant for an injunction under section 34, as a condition of granting an interim injunction, to give any undertakings as to damages.

36 Discharge etc. of injunctions

The Federal Court or the Federal Magistrates Court may discharge or vary an injunction granted by it under this Part.

37 Certain limits on granting injunctions not to apply

Restraining injunctions

- (1) The power of the Federal Court or the Federal Magistrates Court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
 - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

Section 38

Performance injunctions

- (2) The power of the Federal Court or the Federal Magistrates Court to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

38 Other powers of the Federal Court or the Federal Magistrates Court unaffected

The powers conferred on the Federal Court or the Federal Magistrates Court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

Part 6—Miscellaneous

39 Nominees

Nomination by relevant telephone account-holder

- (1) For the purposes of the application of this Act to a telephone number, if:
 - (a) the relevant telephone account-holder has nominated an individual in relation to the number; and
 - (b) the nomination has not been withdrawn;the individual is a **nominee** of the relevant telephone account-holder.
- (2) A nomination, or a withdrawal of a nomination, must be in writing.
- (3) This Act does not prevent 2 or more individuals from being nominated in relation to the same telephone number.

Deemed nominee

- (4) The regulations may provide that, for the purposes of the application of this Act to a telephone number, an individual is taken to be a **nominee** of the relevant telephone account-holder in the circumstances specified in the regulations.

40 Formal warnings—breach of civil penalty provision

The ACMA may issue a formal warning if a person contravenes a civil penalty provision.

41 Additional ACMA functions

The ACMA has the following functions:

- (a) to conduct and/or co-ordinate community education programs about unsolicited telemarketing calls, in consultation with relevant industry and consumer groups and government agencies;

Section 42

- (b) to conduct and/or commission research into issues relating to unsolicited telemarketing calls;
- (c) to liaise with regulatory and other relevant bodies overseas about co-operative arrangements for the prohibition or regulation of unsolicited telemarketing calls.

42 Operation of State and Territory laws

This Act is not intended to exclude or limit the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

43 Implied freedom of political communication

This Act does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

44 Giving effect to international conventions

- (1) The regulations may make provision for and in relation to giving effect to an international convention that deals with telemarketing calls.
- (2) Regulations made for the purposes of subsection (1) may:
 - (a) vest the Federal Court or the Federal Magistrates Court with jurisdiction in a matter or matters arising under the regulations; and
 - (b) prescribe penalties, not exceeding a fine of 50 penalty units, for offences against the regulations; and
 - (c) declare that a specified provision of the regulations is a civil penalty provision for the purposes of this Act.

45 Review of operation of Act

- (1) The Minister must cause to be conducted a review of the operation of:
 - (a) this Act; and
 - (b) the *Telecommunications Act 1997* to the extent to which that Act relates to this Act; and

- (c) Part 6 of the *Telecommunications Act 1997* to the extent to which that Part relates to telemarketing activities (within the meaning of that Part).
- (2) A review under subsection (1) must be conducted:
 - (a) before the end of the period of 3 years after the commencement of this section; or
 - (b) as soon as practicable after the end of that 3-year period.
- (3) The Minister must cause to be prepared a report of a review under subsection (1).
- (4) The Minister must cause copies of a report to be tabled in each House of the Parliament within 15 sittings days of that House after the completion of the preparation of the report.

46 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—Designated telemarketing calls

Note: See section 4.

1 Object

The object of this Schedule is to define the expression *designated telemarketing call*.

Note: Designated telemarketing calls are exempt from section 11 (unsolicited telemarketing calls must not be made to a number registered on the Do Not Call Register).

2 Government bodies, religious organisations and charities

For the purposes of this Act, a telemarketing call is a *designated telemarketing call* if:

- (a) the making of the call is authorised by any of the following bodies:
 - (i) a government body;
 - (ii) a religious organisation;
 - (iii) a charity or charitable institution; and
- (b) if the call relates to goods or services—the body is the supplier, or prospective supplier, of the goods or services; and
- (c) the call is not of a kind specified in the regulations.

3 Political parties, independent members of parliament, candidates etc.

Political parties

- (1) For the purposes of this Act, a telemarketing call is a *designated telemarketing call* if:
 - (a) the making of the call is authorised by a registered political party; and
 - (b) having regard to:
 - (i) the content of the call; and

- (ii) the presentational aspects of the call;
it would be concluded that the purpose, or one of the purposes, of the call is:
 - (iii) to conduct fund-raising for electoral purposes; or
 - (iv) to conduct fund-raising for political purposes; and
- (c) if the call relates to goods or services—the registered political party is the supplier, or prospective supplier, of the goods or services; and
- (d) the call is not of a kind specified in the regulations.

Independent members of parliament etc.

- (2) For the purposes of this Act, a telemarketing call is a ***designated telemarketing call*** if:
- (a) the making of the call is authorised by a person who is a member of:
 - (i) the Parliament of the Commonwealth; or
 - (ii) the parliament of a State; or
 - (iii) the Legislative Assembly for the Australian Capital Territory; or
 - (iv) the Legislative Assembly of the Northern Territory; or
 - (v) the Legislative Assembly of Norfolk Island; or
 - (vi) a local governing body established by or under a law of a State or a Territory;
 and who is not affiliated with any registered political party;
and
 - (b) having regard to:
 - (i) the content of the call; and
 - (ii) the presentational aspects of the call;
it would be concluded that the purpose, or one of the purposes, of the call is:
 - (iii) to conduct fund-raising for electoral purposes; or
 - (iv) to conduct fund-raising for political purposes; and
 - (c) if the call relates to goods or services—the person is the supplier, or prospective supplier, of the goods or services;
and
 - (d) the call is not of a kind specified in the regulations.

Clause 4

Candidates

- (3) For the purposes of this Act, a telemarketing call is a ***designated telemarketing call*** if:
- (a) the making of the call is authorised by a person who is a candidate in an election for:
 - (i) the House of Representatives; or
 - (ii) the Senate; or
 - (iii) a house of the parliament of a State; or
 - (iv) the Legislative Assembly for the Australian Capital Territory; or
 - (v) the Legislative Assembly of the Northern Territory; or
 - (vi) the Legislative Assembly of Norfolk Island; or
 - (vii) a local governing body established by or under a law of a State or a Territory; and
 - (b) having regard to:
 - (i) the content of the call; and
 - (ii) the presentational aspects of the call;it would be concluded that the purpose, or one of the purposes, of the call is:
 - (iii) to conduct fund-raising for electoral purposes; or
 - (iv) to conduct fund-raising for political purposes; and
 - (c) if the call relates to goods or services—the person is the supplier, or prospective supplier, of the goods or services; and
 - (d) the call is not of a kind specified in the regulations.

4 Educational institutions

Relevant telephone account-holder is a householder

- (1) For the purposes of this Act, a telemarketing call is a ***designated telemarketing call*** if:
- (a) the making of the call is authorised by an educational institution; and
 - (b) the call is made to a number that is used or maintained primarily for the private or domestic purposes of the relevant

telephone account-holder and/or members of the relevant account-holder's household; and

- (c) either or both of the following subparagraphs apply:
 - (i) the relevant telephone account-holder is, or has been, enrolled as a student in that institution;
 - (ii) a member or former member of the relevant account-holder's household is, or has been, enrolled as a student in that institution; and
- (d) if the call relates to goods or services—the institution is the supplier, or prospective supplier, of the goods or services; and
- (e) the call is not of a kind specified in the regulations.

Relevant telephone account-holder is an employer

- (2) For the purposes of this Act, a telemarketing call is a **designated telemarketing call** if:
 - (a) the making of the call is authorised by an educational institution; and
 - (b) the relevant telephone account-holder is the employer of an employee; and
 - (c) the call is made to a number that is used or maintained primarily for the private or domestic purposes of the employee and/or members of the employee's household; and
 - (d) either or both of the following subparagraphs apply:
 - (i) the employee is, or has been, enrolled as a student in that institution;
 - (ii) a member or former member of the employee's household is, or has been, enrolled as a student in that institution; and
 - (e) if the call relates to goods or services—the institution is the supplier, or prospective supplier, of the goods or services; and
 - (f) the call is not of a kind specified in the regulations.

Note: Clause 7 provides for an extended meaning of **employee** and **employer**.

5 Regulations

The regulations may provide that a specified kind of telemarketing call is a *designated telemarketing call* for the purposes of this Act.

6 Authorising the making of telemarketing calls

Attribution of authorisation to organisation

- (1) For the purposes of this Schedule (including subclause (2)), if:
 - (a) an individual authorises the making of a telemarketing call;
and
 - (b) the individual does so on behalf of an organisation;then:
 - (c) the organisation is taken to authorise the making of the call;
and
 - (d) the individual is taken not to authorise the making of the call.

Self-authorisation

- (2) For the purposes of this Schedule, if:
 - (a) a telemarketing call is made by an individual or organisation;
and
 - (b) the making of the call is not authorised by any other individual or organisation;the first-mentioned individual or organisation is taken to authorise the making of the call.

7 Extended meaning of *employee* and *employer*

Member of the executive body of a body corporate

- (1) For the purposes of clause 4, if an individual is a member of the executive body (whether described as the board of directors or otherwise) of a body corporate, the individual is taken to be an employee of the body corporate.

Contractor

- (2) For the purposes of clause 4, if an individual works under a contract that is wholly or principally for the labour of the individual, the individual is taken to be an employee of the other party to the contract.

Member of parliament

- (3) For the purposes of clause 4, if an individual is a member of the Parliament of the Commonwealth, the individual is taken to be an employee of the Commonwealth.
- (4) For the purposes of clause 4, if an individual is a member of the parliament of a State, the individual is taken to be an employee of the State.
- (5) For the purposes of clause 4, if an individual is a member of the Legislative Assembly for the Australian Capital Territory, the individual is taken to be an employee of the Australian Capital Territory.
- (6) For the purposes of clause 4, if an individual is a member of the Legislative Assembly of the Northern Territory, the individual is taken to be an employee of the Northern Territory.
- (7) For the purposes of clause 4, if an individual is a member of the Legislative Assembly of Norfolk Island, the individual is taken to be an employee of Norfolk Island.

Member of local governing body

- (8) For the purposes of clause 4, if an individual is a member of a local governing body established by or under a law of a State or Territory, the individual is taken to be an employee of that body.

Officeholder etc.

- (9) For the purposes of clause 4, if an individual:
- (a) holds, or performs the duties of, an appointment, office or position under the Constitution or under a law of the Commonwealth, of a State or of a Territory; or

Schedule 1 Designated telemarketing calls

Clause 7

(b) is otherwise in the service of the Commonwealth, of a State or of a Territory (including service as a member of the Defence Force or as a member of a police force);
the individual is taken to be an employee of the Commonwealth, the State or the Territory, as the case requires.

Schedule 2—Consent

Note: See section 4.

1 Object

The object of this Schedule is to define the expression *consent* when used in relation to the making of a telemarketing call.

Note: The concept of consent is relevant to section 11 (unsolicited telemarketing calls must not be made to a number registered on the Do Not Call Register).

2 Basic definition

For the purposes of this Act, *consent* means:

- (a) express consent; or
- (b) consent that can reasonably be inferred from:
 - (i) the conduct; and
 - (ii) the business and other relationships;
of the individual or organisation concerned.

3 Duration of express consent

For the purposes of this Act, if:

- (a) express consent is given; and
- (b) the consent is not expressed to be for a specified period or for an indefinite period;

the consent is taken to have been withdrawn at the end of the period of 3 months beginning on the day on which the consent was given.

4 Consent may not be inferred from the publication of a telephone number

For the purposes of the application of this Act to a telephone number, consent of:

- (a) the relevant telephone account-holder; or

(b) a nominee of the relevant telephone account-holder; may not be inferred from the mere fact that the telephone number has been published.

5 Regulations about consent

- (1) The regulations may provide that, for the purposes of the application of this Act to a telephone number, the consent of:
 - (a) the relevant telephone account-holder; or
 - (b) a nominee of the relevant telephone account-holder; may not be inferred in the circumstances specified in the regulations.
- (2) The regulations may provide that, for the purposes of the application of this Act to a telephone number, the consent of:
 - (a) the relevant telephone account-holder; or
 - (b) a nominee of the relevant telephone account-holder; may be inferred in the circumstances specified in the regulations.

Schedule 3—Infringement notices

Note: See section 32.

1 Object

The object of this Schedule is to set up a system of infringement notices for contraventions of civil penalty provisions as an alternative to the institution of proceedings in the Federal Court or the Federal Magistrates Court.

2 When an infringement notice can be given

- (1) If an authorised officer has reasonable grounds to believe that a person has, on a particular day, committed one or more contraventions of a particular civil penalty provision, the authorised officer may give to the person an infringement notice relating to those contraventions.
- (2) An infringement notice must be given within 12 months after the day on which the civil contraventions are alleged to have taken place.
- (3) This clause does not authorise the giving of 2 or more infringement notices to a person in relation to contraventions of a particular civil penalty provision that allegedly occurred on the same day.

3 Matters to be included in an infringement notice

- (1) An infringement notice must:
 - (a) set out the name of the person to whom the notice is given; and
 - (b) set out the name of the authorised officer who gave the notice; and
 - (c) either:
 - (i) set out brief details of each of the alleged civil contraventions; or

Clause 4

- (ii) be accompanied by one or more data processing devices that contain, in electronic form, brief details of each of the alleged civil contraventions; and
- (d) contain a statement to the effect that the matter or matters will not be dealt with by the Federal Court or the Federal Magistrates Court if the penalty specified in the notice is paid to the ACMA, on behalf of the Commonwealth, within:
 - (i) 28 days after the notice is given; or
 - (ii) if the ACMA allows a longer period—that longer period; and
- (e) give an explanation of how payment of the penalty is to be made; and
- (f) set out such other matters (if any) as are specified by the regulations.

Note: For the amount of penalty, see clause 4.

- (2) For the purposes of paragraph (1)(c), the brief details must include the following information in relation to each alleged civil contravention:
 - (a) the date of the alleged contravention;
 - (b) the civil penalty provision that was allegedly contravened.
- (3) Subparagraph (1)(c)(ii) does not authorise the inclusion of information in a data processing device unless, at the time the infringement notice was given, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference.
- (4) This clause does not limit the operation of the *Electronic Transactions Act 1999*.

4 Amount of penalty

Infringement notice given to a body corporate

- (1) The penalty to be specified in an infringement notice given to a body corporate must be a pecuniary penalty equal to the number of penalty units worked out using the table:

| Number of penalty units | | |
|--------------------------------|--|---|
| Item | In this case ... | the number of penalty units is ... |
| 1 | the notice relates to a single alleged contravention of subsection 11(1) or (7) | 20 |
| 2 | the notice relates to more than 1, but fewer than 50, alleged contraventions of subsection 11(1) or (7) | the number obtained by multiplying 20 by the number of alleged contraventions |
| 3 | the notice relates to 50 or more alleged contraventions of subsection 11(1) or (7) | 1,000 |
| 4 | the notice relates to a single alleged contravention of a civil penalty provision other than subsection 11(1) or (7) | 10 |
| 5 | the notice relates to more than 1, but fewer than 50, alleged contraventions of a civil penalty provision other than subsection 11(1) or (7) | the number obtained by multiplying 10 by the number of alleged contraventions |
| 6 | the notice relates to 50 or more alleged contraventions of a civil penalty provision other than subsection 11(1) or (7) | 500 |

Infringement notice given to a person other than a body corporate

- (2) The penalty to be specified in an infringement notice given to a person other than a body corporate must be a pecuniary penalty equal to the number of penalty units worked out using the table:

| Number of penalty units | | |
|--------------------------------|---|---|
| Item | In this case ... | the number of penalty units is ... |
| 1 | the notice relates to a single alleged contravention of subsection 11(1) or (7) | 4 |

Clause 5

| Number of penalty units | | |
|--------------------------------|--|--|
| Item | In this case ... | the number of penalty units is ... |
| 2 | the notice relates to more than 1, but fewer than 50, alleged contraventions of subsection 11(1) or (7) | the number obtained by multiplying 4 by the number of alleged contraventions |
| 3 | the notice relates to 50 or more alleged contraventions of subsection 11(1) or (7) | 200 |
| 4 | the notice relates to a single alleged contravention of a civil penalty provision other than subsection 11(1) or (7) | 2 |
| 5 | the notice relates to more than 1, but fewer than 50, alleged contraventions of a civil penalty provision other than subsection 11(1) or (7) | the number obtained by multiplying 2 by the number of alleged contraventions |
| 6 | the notice relates to 50 or more alleged contraventions of a civil penalty provision other than subsection 11(1) or (7) | 100 |

5 Withdrawal of an infringement notice

- (1) This clause applies if an infringement notice is given to a person.
- (2) An authorised officer may, by written notice (the *withdrawal notice*) given to the person, withdraw the infringement notice.
- (3) To be effective, the withdrawal notice must be given to the person within 28 days after the infringement notice was given.

Refund of penalty if infringement notice withdrawn

- (4) If:
 - (a) the penalty specified in the infringement notice is paid; and
 - (b) the infringement notice is withdrawn after the penalty is paid;
 the Commonwealth is liable to refund the penalty.

6 What happens if the penalty is paid

- (1) This clause applies if:
 - (a) an infringement notice relating to one or more alleged civil contraventions is given to a person; and
 - (b) the penalty is paid in accordance with the infringement notice; and
 - (c) the infringement notice is not withdrawn.
- (2) Any liability of the person for the alleged civil contraventions is discharged.
- (3) Proceedings under Part 4 may not be brought against the person for the alleged civil contraventions.

7 Effect of this Schedule on civil proceedings

This Schedule does not:

- (a) require an infringement notice to be given in relation to an alleged civil contravention; or
- (b) affect the liability of a person to have proceedings under Part 4 brought against the person for an alleged civil contravention if:
 - (i) the person does not comply with an infringement notice relating to the contravention; or
 - (ii) an infringement notice relating to the contravention is not given to the person; or
 - (iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or
- (c) limit the Federal Court's or the Federal Magistrates Court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings under Part 4 to have committed a civil contravention.

8 Appointment of authorised officer

The ACMA may, by writing, appoint a member of the staff of the ACMA as an authorised officer for the purposes of this Schedule.

9 Regulations

The regulations may make further provision in relation to infringement notices.

*[Minister's second reading speech made in—
House of Representatives on 25 May 2006
Senate on 19 June 2006]*

(68/06)