



Do Not Call Register Legislation Amendment Act 2010

No. 46, 2010

**An Act to amend the *Do Not Call Register Act 2006*,
and for other purposes**

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No. 46, 2010

An Act to amend the *Do Not Call Register Act 2006*, and for other purposes

[Assented to 18 May 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Do Not Call Register Legislation
Amendment Act 2010*.

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 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	18 May 2010
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	30 May 2010 (see F2010L01325)

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendment of the Do Not Call Register Act 2006

Division 1—Amendments

Do Not Call Register Act 2006

1 Section 3

After:

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

insert:

- Unsolicited marketing faxes must not be sent to a number registered on the Do Not Call Register.

2 Section 3 (note)

After “calls”, insert “and marketing faxes”.

3 Section 4 (definition of *authorise*)

Repeal the definition, substitute:

authorise:

- (a) when used in relation to the making of a telemarketing call—has a meaning affected by clause 6 of Schedule 1; or
- (b) when used in relation to the sending of a marketing fax—has a meaning affected by clause 6 of Schedule 1A.

4 Section 4

Insert:

business number means an Australian number other than a number that is used, or maintained, exclusively or primarily for private or domestic purposes.

5 Section 4 (definition of *cause*)

Repeal the definition, substitute:

cause:

- (a) when used in relation to the making of a telemarketing call—has a meaning affected by subsection 11(9); or
- (b) when used in relation to the sending of a marketing fax—has a meaning affected by subsection 12B(10).

6 Section 4 (after paragraph (d) of the definition of *civil penalty provision*)

Insert:

- (da) subsection 12B(1);
- (db) subsection 12B(8);
- (dc) subsection 12C(1);
- (dd) subsection 12C(2);

7 Section 4 (definition of *consent*)

After “call”, insert “or the sending of a marketing fax”.

8 Section 4 (definition of *dealing with*)

Repeal the definition, substitute:

dealing with:

- (a) when used in relation to a telemarketing call—includes retrieving the call from a voicemail system or similar system; or
- (b) when used in relation to a marketing fax—includes:
 - (i) printing the fax; and
 - (ii) retrieving the fax from a device or a computer system.

9 Section 4

Insert:

designated marketing fax has the meaning given by Schedule 1A.

9A Section 4

Insert:

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

10 Section 4 (definition of *employee*)

Repeal the definition, substitute:

employee:

- (a) when used in clause 4 of Schedule 1—has a meaning affected by clause 7 of Schedule 1; or
- (b) when used in clause 4 of Schedule 1A—has a meaning affected by clause 7 of Schedule 1A.

11 Section 4 (definition of *employer*)

Repeal the definition, substitute:

employer:

- (a) when used in clause 4 of Schedule 1—has a meaning affected by clause 7 of Schedule 1; or
- (b) when used in clause 4 of Schedule 1A—has a meaning affected by clause 7 of Schedule 1A.

13 Section 4

Insert:

fax has a meaning affected by section 5A.

15 Section 4

Insert:

marketing fax has the meaning given by section 5B.

17 Section 4

Insert:

relevant account-holder, in relation to an Australian number, means:

- (a) if an individual or organisation is solely responsible for the relevant account—the individual or organisation; or

- (b) if 2 or more individuals and/or organisations are jointly responsible for the relevant account—any of those individuals or organisations.

18 Section 4 (definition of *relevant telephone account-holder*)

Repeal the definition.

19 Section 4

Insert:

send includes attempt to send.

20 Subsection 5(1)

Omit “a telephone”, substitute “an Australian”.

21 Paragraphs 5(1)(c) and (d)

Omit “telephone” (wherever occurring).

22 After section 5

Insert:

5A Faxes

A reference in this Act to a *fax* is a reference to a fax, whether or not:

- (a) the fax is a facsimile of a physical document; or
- (b) the fax was created by computer software; or
- (c) the sending of the fax involves the use of:
 - (i) a fax machine; or
 - (ii) a fax server; or
 - (iii) a fax gateway; or
 - (iv) a mail-to-fax system; or
 - (v) equipment specified in the regulations; or
 - (vi) a system specified in the regulations.

5B Marketing faxes

Basic definition

- (1) For the purposes of this Act, a **marketing fax** is a fax sent to an Australian number, where, having regard to:
 - (a) the content of the fax; and
 - (b) the presentational aspects of the fax; and
 - (c) the content that can be obtained using the numbers, URLs or contact information (if any) mentioned in the fax;it would be concluded that the purpose, or one of the purposes, of the fax is:
 - (d) to offer to supply goods or services; or
 - (e) to advertise or promote goods or services; or
 - (f) to advertise or promote a supplier, or prospective supplier, of goods or services; or
 - (g) to offer to supply land or an interest in land; or
 - (h) to advertise or promote land or an interest in land; or
 - (i) to advertise or promote a supplier, or prospective supplier, of land or an interest in land; or
 - (j) to offer to provide a business opportunity or investment opportunity; or
 - (k) to advertise or promote a business opportunity or investment opportunity; or
 - (l) to advertise or promote a provider, or prospective provider, of a business opportunity or investment opportunity; or
 - (m) to solicit donations; or
 - (n) a purpose specified in the regulations.
- (2) For the purposes of paragraphs (1)(d) to (l), it is immaterial whether the goods, services, land, interest or opportunity exists.
- (3) For the purposes of paragraphs (1)(d) to (l), 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)(f) or (i);

- (b) the provider or prospective provider mentioned in paragraph (1)(l);
may be the individual or organisation who sent the fax or authorised the sending of the fax.
- (5) Paragraphs (1)(d) to (n) are to be read independently of each other.
- (6) Subsection (1) has effect subject to subsection (7).

Excluded faxes—regulations

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

23 Paragraphs 11(2)(a) and (b)

Omit “telephone”.

24 Paragraph 11(3)(b)

Repeal the paragraph, substitute:

- (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 paragraph 19(2)(d) in response to the submission of the list, but that information did not state that the number was registered on the Do Not Call Register; or
 - (ii) the person was informed under paragraph 19(2)(e), in response to the submission of the list, that the number was not registered on the Do Not Call Register; or
 - (iii) under paragraph 19(2)(f), in response to the submission of the list, the person was given a list that included the number.

25 Subsection 11(3)

Omit “telephone”, substitute “Australian”.

28 Paragraph 12(1)(b)

Omit “telephone numbers”, substitute “Australian numbers”.

29 After Part 2

Insert:

Part 2A—Rules about sending marketing faxes

12A Simplified outline

The following is a simplified outline of this Part:

- Unsolicited marketing faxes must not be sent to a number registered on the Do Not Call Register.
- Agreements for the sending of marketing faxes must require compliance with this Act.

12B Unsolicited marketing faxes must not be sent to a number registered on the Do Not Call Register

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

Note: For *designated marketing fax*, see Schedule 1A.

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

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 fax was sent:
 - (i) the person received information under paragraph 19(2)(d) in response to the submission of the list, but that information did not state that the number was registered on the Do Not Call Register; or

- (ii) the person was informed under paragraph 19(2)(e), in response to the submission of the list, that the number was not registered on the Do Not Call Register; or
- (iii) under paragraph 19(2)(f), 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 Australian number.

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

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

Ancillary contraventions

- (8) 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

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

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

*Extended meaning of **cause***

- (10) 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 send, or to cause any or all of the employees or agents of the other person to send, marketing faxes; and
 - (c) the other person, or an employee or agent of the other person, gives effect to the contract, arrangement or understanding by sending a marketing fax;
- the first person is taken to have *caused* the marketing fax to be sent.
- (11) Paragraph (10)(a) applies to contracts or arrangements entered into, or understandings arrived at, before, at or after the commencement of this section.

12C Agreements for the sending of marketing faxes 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) send marketing faxes; or
 - (ii) cause any or all of the employees or agents of the other person to send marketing faxes; and
 - (b) there is a reasonable likelihood that some or all of those faxes will be sent to Australian 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;
- in relation to the sending of marketing faxes 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.

30 Subsection 13(1)

Omit “telephone”, substitute “Australian”.

32 Subsection 13(6)

Repeal the subsection, substitute:

- (6) For the purposes of the *Privacy Act 1988*, the primary purpose of the Do Not Call Register is to facilitate:
- (a) the prohibition, under section 11, of unsolicited telemarketing calls (other than designated telemarketing calls); and
 - (b) the prohibition, under section 12B, of unsolicited marketing faxes (other than designated marketing faxes).

33 Section 14

Repeal the section, substitute:

14 Eligibility for registration

An Australian number is eligible to be entered on the Do Not Call Register if:

- (a) it is used or maintained primarily for private or domestic purposes; or
- (b) it is used or maintained exclusively for transmitting and/or receiving faxes; or
- (c) it is used or maintained exclusively for use by a government body; or
- (d) it is an emergency service number.

35 Section 15

Omit “a telephone”, substitute “an Australian”.

36 Subparagraphs 15(a)(i) and (ii)

Omit “telephone”.

39 Paragraph 16(a)

Omit “a telephone number”, substitute “an Australian number”.

40 Subsection 17(1)

Omit “a telephone”, substitute “an Australian”.

42 Paragraph 17(1)(b)

Repeal the paragraph, substitute:

- (b) remains in force for:
 - (i) 3 years; or
 - (ii) if a longer period is specified in an instrument in force under subsection (1A)—that longer period;
unless sooner removed from the Do Not Call Register in accordance with a determination under subsection 18(1).

42A After subsection 17(1)

Insert:

- (1A) The Minister may, by legislative instrument, specify a period for the purposes of subparagraph (1)(b)(ii).

43 Subsection 17(2)

Omit “a telephone”, substitute “an Australian”.

46 Subsection 17(3)

Omit “a telephone”, substitute “an Australian”.

49 Paragraph 18(1)(a)

Omit “telephone”, substitute “Australian”.

50 Subsection 19(1)

Omit “telephone” (wherever occurring), substitute “Australian”.

51 Paragraph 19(2)(c)

Omit “telephone” (wherever occurring), substitute “Australian”.

52 Paragraph 19(2)(d)

Repeal the paragraph, substitute:

- (d) if the access-seeker requests the ACMA or the contracted service provider, as the case may be, to do so—inform the access-seeker which numbers (if any) on the access-seeker’s list are registered on the Do Not Call Register; and
- (e) if the access-seeker requests the ACMA or the contracted service provider, as the case may be, to do so—inform the access-seeker which numbers (if any) on the access-seeker’s list are not registered on the Do Not Call Register; and
- (f) if the access-seeker requests the ACMA or the contracted service provider, as the case may be, to do so—return the access-seeker’s list, modified by the deletion of the numbers (if any) registered on the Do Not Call Register.

53 Subsection 19(3)

Repeal the subsection.

54 Paragraph 20(1)(b)

Omit “19(2)(d)”, substitute “19(2)(d) or (e)”.

55 Paragraph 20(1)(c)

Omit “subsection 19(3)”, substitute “paragraph 19(2)(f)”.

56 Paragraph 21(1)(a)

Omit “or (3)”.

57 Subsections 21(2), (3) and (7)

Omit “or (3)”.

58 Subsections 25(1), (3), (4), (5) and (6)

After “11(1) or (7)” (wherever occurring), insert “or 12B(1) or (8)”.

59 After subsection 30(2)

Insert:

- (2A) 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 12B in relation to the sending of one or more marketing faxes, 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 faxes;
 - (b) the effect of dealing with the faxes 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 faxes;
 - (d) any loss of business opportunities suffered by the victim as a result of dealing with the faxes;
 - (e) any other matters that the court considers relevant.

60 Subsection 39(1)

Omit “a telephone”, substitute “an Australian”.

Note: The heading to subsection 39(1) is altered by omitting “*telephone*”.

61 Subsection 39(1)

Omit “relevant telephone” (wherever occurring), substitute “relevant”.

62 Subsection 39(3)

Omit “telephone”, substitute “Australian”.

63 Subsection 39(4)

Omit “a telephone”, substitute “an Australian”.

64 Subsection 39(4)

Omit “relevant telephone”, substitute “relevant”.

65 At the end of section 39

Add:

Principles of agency not limited

- (5) References in this Act to a nominee do not, by implication, limit the application of the principles of agency to a matter arising under this Act.

66 Paragraphs 41(a), (b) and (c)

After “unsolicited telemarketing calls”, insert “and unsolicited marketing faxes”.

67 At the end of subsection 44(1)

Add “or marketing faxes”.

68 Paragraph 4(1)(b) of Schedule 1

Omit “telephone”.

Note: The heading to subclause 4(1) of Schedule 1 is altered by omitting “*telephone*”.

69 Subparagraph 4(1)(c)(i) of Schedule 1

Omit “telephone”.

70 Paragraph 4(2)(b) of Schedule 1

Omit “telephone”.

Note: The heading to subclause 4(2) of Schedule 1 is altered by omitting “*telephone*”.

71 After Schedule 1

Insert:

Schedule 1A—Designated marketing faxes

Note: See section 4.

1 Object

The object of this Schedule is to define the expression *designated marketing fax*.

Note: Designated marketing faxes are exempt from section 12B (unsolicited marketing faxes must not be sent to a number registered on the Do Not Call Register).

2 Government bodies, religious organisations and charities

For the purposes of this Act, a marketing fax is a *designated marketing fax* if:

- (a) the sending of the fax 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 fax relates to goods or services—the body is the supplier, or prospective supplier, of the goods or services; and
- (c) the fax 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 marketing fax is a *designated marketing fax* if:
 - (a) the sending of the fax is authorised by a registered political party; and
 - (b) having regard to:
 - (i) the content of the fax; and
 - (ii) the presentational aspects of the fax;it would be concluded that the purpose, or one of the purposes, of the fax is:
 - (iii) to conduct fund-raising for electoral purposes; or
 - (iv) to conduct fund-raising for political purposes; and

- (c) if the fax relates to goods or services—the registered political party is the supplier, or prospective supplier, of the goods or services; and
- (d) the fax is not of a kind specified in the regulations.

Independent members of parliament etc.

- (2) For the purposes of this Act, a marketing fax is a **designated marketing fax** if:
 - (a) the sending of the fax 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 fax; and
 - (ii) the presentational aspects of the fax;it would be concluded that the purpose, or one of the purposes, of the fax is:
 - (iii) to conduct fund-raising for electoral purposes; or
 - (iv) to conduct fund-raising for political purposes; and
 - (c) if the fax relates to goods or services—the person is the supplier, or prospective supplier, of the goods or services; and
 - (d) the fax is not of a kind specified in the regulations.

Candidates

- (3) For the purposes of this Act, a marketing fax is a **designated marketing fax** if:
 - (a) the sending of the fax 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 fax; and
 - (ii) the presentational aspects of the fax;
- it would be concluded that the purpose, or one of the purposes, of the fax is:
- (iii) to conduct fund-raising for electoral purposes; or
 - (iv) to conduct fund-raising for political purposes; and
- (c) if the fax relates to goods or services—the person is the supplier, or prospective supplier, of the goods or services; and
- (d) the fax is not of a kind specified in the regulations.

4 Educational institutions

Relevant account-holder is a householder

- (1) For the purposes of this Act, a marketing fax is a ***designated marketing fax*** if:
- (a) the sending of the fax is authorised by an educational institution; and
 - (b) the fax is sent to a number that is used or maintained primarily for the private or domestic purposes of the relevant 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 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 fax relates to goods or services—the institution is the supplier, or prospective supplier, of the goods or services; and
- (e) the fax is not of a kind specified in the regulations.

Relevant account-holder is an employer

- (2) For the purposes of this Act, a marketing fax is a **designated marketing fax** if:
 - (a) the sending of the fax is authorised by an educational institution; and
 - (b) the relevant account-holder is the employer of an employee; and
 - (c) the fax is sent 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 fax relates to goods or services—the institution is the supplier, or prospective supplier, of the goods or services; and
 - (f) the fax 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 marketing fax is a **designated marketing fax** for the purposes of this Act.

6 Authorising the sending of marketing faxes

Attribution of authorisation to organisation

- (1) For the purposes of this Schedule (including subclause (2)), if:
 - (a) an individual authorises the sending of a marketing fax; and
 - (b) the individual does so on behalf of an organisation;
-

then:

- (c) the organisation is taken to authorise the sending of the fax;
and
- (d) the individual is taken not to authorise the sending of the fax.

Self-authorisation

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

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

Schedule 1 Amendments

Part 1 Amendment of the Do Not Call Register Act 2006

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
 - (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.

72 At the end of clause 1 of Schedule 2 (before the note)

Add “or the sending of a marketing fax”.

73 Clause 1 of Schedule 2 (at the end of the note)

Add “and section 12B (unsolicited marketing faxes must not be sent to a number registered on the Do Not Call Register)”.

77 Clause 4 of Schedule 2

Omit “a telephone”, substitute “an Australian”.

Note: The heading to clause 4 of Schedule 2 is altered by omitting “a telephone” and substituting “an Australian”.

78 Paragraphs 4(a) and (b) of Schedule 2

Omit “telephone”.

79 Clause 4 of Schedule 2

Omit “the telephone number”, substitute “the number”.

80 Subclause 5(1) of Schedule 2

Omit “a telephone”, substitute “an Australian”.

81 Paragraphs 5(1)(a) and (b) of Schedule 2

Omit “telephone”.

82 Subclause 5(2) of Schedule 2

Omit “a telephone”, substitute “an Australian”.

83 Paragraphs 5(2)(a) and (b) of Schedule 2

Omit “telephone”.

84 At the end of Schedule 2

Add:

7 Determinations about consent—marketing faxes sent to business numbers

- (1) The ACMA may, by legislative instrument, determine that, for the purposes of the application of this Act to a marketing fax sent to a business number, the consent of the relevant account-holder may not be inferred in the circumstances specified in the determination.
- (2) The ACMA may, by legislative instrument, determine that, for the purposes of the application of this Act to a marketing fax sent to a business number, the consent of the relevant account-holder may be inferred in the circumstances specified in the determination.
- (3) Before making a determination under subclause (1) or (2), the ACMA must consult the Minister.
- (4) Before making a determination under subclause (1) or (2), the ACMA must:
 - (a) publish on its website a notice:
 - (i) setting out a draft of the determination; and

Schedule 1 Amendments

Part 1 Amendment of the Do Not Call Register Act 2006

- (ii) inviting persons to make submissions to the ACMA about the draft determination within 14 days after the notice is published; and
- (b) consider any submissions received within the 14-day period.
- (5) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a power conferred on the ACMA by subclause (1) or (2). However, if a variation of a determination under subclause (1) or (2) is a variation of a minor nature, the ACMA is not required to comply with subclause (3) or (4) in relation to the variation.
- (6) If a determination under subclause (1) or (2) of this clause is inconsistent with regulations made for the purposes of clause 5, the determination has no effect to the extent of the inconsistency.

85 After subclause 2(2) of Schedule 3

Insert:

- (2A) Subclause (2) does not apply to a contravention of subsection 12(1) or (2) or 12C(1) or (2).

Note 1: Section 12 deals with agreements for the making of telemarketing calls.

Note 2: Section 12C deals with agreements for the sending of marketing faxes.

86 Subclause 4(1) of Schedule 3 (table items 1, 2, 3, 4, 5 and 6)

After “11(1) or (7)”, insert “or 12B(1) or (8)”.

87 Subclause 4(2) of Schedule 3 (table items 1, 2, 3, 4, 5 and 6)

After “11(1) or (7)”, insert “or 12B(1) or (8)”.

Division 2—Application

88 Application—agreements for the making of telemarketing calls

The amendment of paragraph 12(1)(b) of the *Do Not Call Register Act 2006* made by this Part applies in relation to:

- (a) a contract or arrangement entered into; or
- (b) an understanding arrived at;

after the commencement of this item.

89 Application—continuity of the Do Not Call Register

The amendments of section 13 of the *Do Not Call Register Act 2006* made by this Part do not affect the continuity of the Do Not Call Register.

90 Application—registration of an Australian number

If:

- (a) an application for an Australian number to be entered on the Do Not Call Register was made before the commencement of this item under section 15 of the *Do Not Call Register Act 2006*; and
- (b) the application was pending immediately before that commencement;

the application has effect as if it were an application made after that commencement under section 15 of the *Do Not Call Register Act 2006* as amended by this Part.

91 Application—access to the Do Not Call Register

Despite the following amendments made, and repeals effected, by this Part:

- (a) the repeal of paragraph 11(3)(b) of the *Do Not Call Register Act 2006*;
- (b) the repeal of paragraph 19(2)(d) of the *Do Not Call Register Act 2006*;
- (c) the repeal of subsection 19(3) of the *Do Not Call Register Act 2006*;
- (d) the amendment of paragraph 20(1)(b) of the *Do Not Call Register Act 2006*;
- (e) the amendment of paragraph 20(1)(c) of the *Do Not Call Register Act 2006*;
- (f) the amendments of section 21 of the *Do Not Call Register Act 2006*;

those paragraphs, that subsection and that section continue to apply, in relation to a list submitted under subsection 19(1) of the *Do Not Call Register Act 2006* before the commencement of this item, as if those amendments had not been made and those repeals had not been effected.

92 Application—continuity of a nomination

The amendments of subsections 39(1) and (3) of the *Do Not Call Register Act 2006* made by this Part do not affect the continuity of a nomination in force under that section immediately before the commencement of this item.

93 Application—principles of agency

Subsection 39(5) of the *Do Not Call Register Act 2006* as amended by this Part applies to a matter arising under that Act before, at or after the commencement of this item.

94 Application—infringement notices

Subclause 2(2A) of Schedule 3 of the *Do Not Call Register Act 2006* as amended by this Part applies in relation to an alleged contravention that occurs after the commencement of this item.

Division 3—Transitional

94A Transitional—reinstatement of registration of numbers

The Minister may, by legislative instrument, determine that, if:

- (a) the registration of an Australian number on the Do Not Call Register ceased to be in force before the commencement of the instrument; and
- (b) the cessation was:
 - (i) as a result of paragraph 17(1)(b) of the *Do Not Call Register Act 2006* as in force before the commencement of this item; and
 - (ii) not because of the removal of the number from the Do Not Call Register in accordance with a determination under subsection 18(1) of the *Do Not Call Register Act 2006*; and
- (c) the number was not registered on the Do Not Call Register immediately before the commencement of this item; and
- (d) no application for the number to be entered on the Do Not Call Register was pending immediately before the commencement of this item;

then:

- (e) the number must be entered on the Do Not Call Register by:

- (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
- (f) despite subsection 17(1) of the *Do Not Call Register Act 2006* as amended by this Part, the registration of the number on the Do Not Call Register:
- (i) takes effect when it is entered on the Do Not Call Register; and
 - (ii) remains in force for the period specified in the instrument, unless sooner removed from the Do Not Call Register in accordance with a determination under subsection 18(1) of the *Do Not Call Register Act 2006* as amended by this Part.

Part 2—Other amendments

Telecommunications Act 1997

95 At the end of subsection 3(2)

Add:

- ; (l) to promote responsible practices in relation to the sending of marketing faxes.

96 Section 5

Omit “or the telemarketing industry” (wherever occurring), substitute “, the telemarketing industry or the fax marketing industry”.

97 Section 7

Insert:

fax marketing industry means an industry that involves carrying on a fax marketing activity (as defined by section 109C).

98 Section 7

Insert:

marketing fax means:

- (a) a marketing fax (within the meaning of the *Do Not Call Register Act 2006*) that is sent to an Australian number; or
- (b) a fax (within the meaning of the *Do Not Call Register Act 2006*) that is sent to an Australian number, where, having regard to:
 - (i) the content of the fax; and
 - (ii) the presentational aspects of the fax;it would be concluded that the purpose, or one of the purposes, of the fax is:
 - (iii) to conduct opinion polling; or
 - (iv) to carry out standard questionnaire-based research.

99 Section 106

Omit “or the telemarketing industry” (wherever occurring), substitute “, the telemarketing industry or the fax marketing industry”.

100 After section 109B

Insert:

109C Fax marketing activity

- (1) For the purposes of this Part, a *fax marketing activity* is an activity to which subsection (2), (3) or (4) applies.
- (2) This subsection applies to an activity that:
 - (a) is carried on by a person (the *first person*) under a contract or arrangement (other than a contract of employment); and
 - (b) consists of:
 - (i) using marketing faxes to market, advertise or promote goods or services, where the first person is not the supplier or prospective supplier of the goods or services; or
 - (ii) using marketing faxes to advertise or promote a supplier or prospective supplier of goods or services, where the first person is not the supplier or prospective supplier of the goods or services; or
 - (iii) using marketing faxes to market, advertise or promote land or interests in land, where the first person is not the supplier or prospective supplier of the land or interests in land; or
 - (iv) using marketing faxes to advertise or promote a supplier or prospective supplier of land or interests in land, where the first person is not the supplier or prospective supplier of the land or interests in land; or
 - (v) using marketing faxes to market, advertise or promote business opportunities or investment opportunities, where the first person is not the provider or prospective provider of the business opportunities or investment opportunities; or
 - (vi) using marketing faxes to advertise or promote a provider, or prospective provider, of business opportunities or investment opportunities, where the first person is not the provider or prospective provider

of the business opportunities or investment opportunities.

- (3) This subsection applies to an activity carried on by a person if the activity consists of:
- (a) using marketing faxes to market, advertise or promote goods or services, where the person is the supplier or prospective supplier of the goods or services; or
 - (b) using marketing faxes to advertise or promote a supplier or prospective supplier of goods or services, where the person is the supplier or prospective supplier of the goods or services; or
 - (c) using marketing faxes to market, advertise or promote land or interests in land, where the person is the supplier or prospective supplier of the land or interests in land; or
 - (d) using marketing faxes to advertise or promote a supplier or prospective supplier of land or interests in land, where the person is the supplier or prospective supplier of the land or interests in land; or
 - (e) using marketing faxes to market, advertise or promote business opportunities or investment opportunities, where the person is the provider or prospective provider of the business opportunities or investment opportunities; or
 - (f) using marketing faxes to advertise or promote a provider, or prospective provider, of business opportunities or investment opportunities, where the person is the provider or prospective provider of the business opportunities or investment opportunities.
- (4) This subsection applies to an activity carried on by a person if the activity consists of:
- (a) using marketing faxes to solicit donations; or
 - (b) using marketing faxes to conduct opinion polling; or
 - (c) using marketing faxes to carry out standard questionnaire-based research.
- (5) An expression (other than *marketing fax*) used in this section and in section 5B of the *Do Not Call Register Act 2006* has the same meaning in this section as it has in that section.

101 After section 110B

Insert:

110C Sections of the fax marketing industry

- (1) For the purposes of this Part, *sections of the fax marketing industry* are to be ascertained in accordance with this section.
- (2) If no determination is in force under subsection (3), all of the persons carrying on, or proposing to carry on, fax marketing activities constitute a single section of the fax marketing industry for the purposes of this Part.
- (3) The ACMA may, by legislative instrument, determine that persons carrying on, or proposing to carry on, one or more specified kinds of fax marketing activity constitute a section of the fax marketing industry for the purposes of this Part.
- (4) The section must be identified in the determination by a unique name and/or number.
- (5) A determination under subsection (3) has effect accordingly.
- (6) Sections of the fax marketing industry determined under subsection (3):
 - (a) need not be mutually exclusive; and
 - (b) may consist of the aggregate of any 2 or more sections of the fax marketing industry mentioned in subsection (2) or determined under subsection (3); and
 - (c) may be subsets of a section of the fax marketing industry mentioned in subsection (2) or determined under subsection (3).
- (7) Subsection (6) does not, by implication, limit subsection (3).

102 After section 111AA

Insert:

111AB Participants in a section of the fax marketing industry

For the purposes of this Part, if a person is a member of a group that constitutes a section of the fax marketing industry, the person is a *participant* in that section of the fax marketing industry.

103 After subsection 112(1B)

Insert:

- (1C) The Parliament intends that bodies or associations that the ACMA is satisfied represent sections of the fax marketing industry should develop codes (*industry codes*) that are to apply to participants in the respective sections of the industry in relation to the fax marketing activities of the participants.

104 Subsection 112(2)

Omit “and 125A”, substitute “, 125A and 125B”.

105 Subsection 112(2)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

106 After subsection 112(3C)

Insert:

- (3D) In determining whether public interest considerations are being addressed in a way that does not impose undue financial and administrative burdens on participants in sections of the fax marketing industry, the ACMA must have regard to:
- (a) the number of persons who would be likely to benefit from the code or standard concerned; and
 - (b) the extent to which those persons are householders or small business operators; and
 - (c) the legitimate business interests of participants in sections of the fax marketing industry.

107 Subsection 112(4)

Omit “and (3C)”, substitute “, (3C) and (3D)”.

108 Subsection 113(2)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

109 Paragraph 113(3)(y)

Omit “telephone”, substitute “Australian”.

110 At the end of subsection 113(3)

Add:

- ; (z) record-keeping practices to be followed in relation to marketing faxes sent or attempted to be sent;
- (za) action to be taken to limit the total number of marketing faxes sent or attempted to be sent, by a particular participant in a section of the fax marketing industry, during a particular period to a particular Australian number.

111 Paragraph 117(1)(a)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

112 Paragraph 117(1)(b)

Omit “or telemarketing activities”, substitute “, telemarketing activities or fax marketing activities”.

113 Paragraph 117(1)(h)

Repeal the paragraph, substitute:

(h) except in a case where:

- (i) the code applies to participants in a section of the telemarketing industry and deals with one or more matters relating to the telemarketing activities of those participants; or
- (ii) the code applies to participants in a section of the fax marketing industry and deals with one or more matters relating to the fax marketing activities of those participants;

the ACMA is satisfied that the Telecommunications Industry Ombudsman has been consulted about the development of the code; and

114 Subparagraph 117(1)(k)(iii)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

115 Subsection 118(1)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

116 Paragraph 118(1)(a)

Omit “or telemarketing activities”, substitute “, telemarketing activities or fax marketing activities”.

117 Subsection 118(3)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

118 Paragraph 118(4A)(c)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

119 Subsection 119(1)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

Note: The heading to section 119 is altered by omitting “**or the telemarketing industry**” and substituting “, **the telemarketing industry or the fax marketing industry**”.

120 Paragraph 119(1)(b)

Omit “or telemarketing activities”, substitute “, telemarketing activities or fax marketing activities”.

121 Paragraph 121(1)(a)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

122 Subsection 122(1)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

123 Subparagraph 123(1)(a)(i)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

124 Subparagraph 123(1)(a)(ii)

Omit “or telemarketing activities”, substitute “telemarketing activities or fax marketing activities”.

125 Paragraph 124(1)(a)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

126 Subparagraph 124(1)(c)(ii)

Omit “or telemarketing activities”, substitute “, telemarketing activities or fax marketing activities”.

127 Subparagraph 125(1)(a)(i)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

128 Subparagraph 125(1)(a)(ii)

Omit “or telemarketing activities”, substitute “, telemarketing activities or fax marketing activities”.

129 Subsection 125(7)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

130 Subsection 125(7)

Omit “or telemarketing activities”, substitute “, telemarketing activities or fax marketing activities”.

131 After section 125A

Insert:

125B ACMA must determine certain industry standards relating to the fax marketing industry

- (1) The ACMA may, by legislative instrument, determine a standard that:

- (a) applies to participants in each section of the fax marketing industry; and
- (b) deals with the following matters relating to the fax marketing activities of those participants:
 - (i) restricting the hours and/or days during which marketing faxes may be sent, or attempted to be sent, to an Australian number;
 - (ii) requiring that a marketing fax sent to an Australian number must contain specified information about the person who authorised the sending of the fax;
 - (iii) restricting the total number of marketing faxes sent, or attempted to be sent, by the relevant participant during a particular period to a particular Australian number;
 - (iv) requiring that, if a marketing fax sent to an Australian number is authorised by a particular person (the ***authorising person***), the fax must contain information about how the recipient of the fax may send a message to the effect that the recipient does not want to receive any marketing faxes authorised by the authorising person.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) A standard under subsection (1) is to be known as an ***industry standard***.
- (3) If the ACMA is satisfied that a body or association represents a section of the fax marketing industry, the ACMA must consult the body or association before determining a standard under subsection (1).
- (4) The ACMA must ensure that a standard is in force under subsection (1) at all times after the commencement of this section.
- (5) For the purposes of this section, ***authorise***, when used in relation to a marketing fax, has the same meaning as in the *Do Not Call Register Act 2006*.

132 Subsection 128(1)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

133 Subsection 129(1)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

134 Subsection 130(1)

Omit “or the telemarketing industry”, substitute “, the telemarketing industry or the fax marketing industry”.

135 Paragraphs 130(1)(a) and (b)

Omit “or telemarketing activities”, substitute “, telemarketing activities or fax marketing activities”.

136 Subsection 133(1A)

After “125A”, insert “or 125B”.

137 Section 135A

After “125A”, insert “or 125B”.

138 Paragraphs 139(1)(a) and (b)

Omit “telemarketing activities”, substitute “telemarketing activities or fax marketing activities”.

Note: The heading to section 139 is altered by inserting “**or fax marketing activities**” after “**telemarketing activities**”.

139 At the end of section 509

Add:

- (7) If it appears to the ACMA that:
- (a) a person (the *first person*) wishes to make a complaint about:
 - (i) a contravention of a code registered under Part 6, where the code applies to participants in a section of the fax marketing industry (within the meaning of Part 6) and deals with one or more matters relating to the fax marketing activities (within the meaning of Part 6) of those participants; or
 - (ii) a contravention of section 128 in relation to an industry standard, where the standard applies to participants in a section of the fax marketing industry (within the meaning of Part 6) and deals with one or more matters

- relating to the fax marketing activities (within the meaning of Part 6) of those participants; or
 - (iii) a contravention of the *Do Not Call Register Act 2006* or regulations under that Act; and
 - (b) the complaint relates to a marketing fax sent, or attempted to be sent, to an Australian number; and
 - (c) the first person does not have sufficient information to identify:
 - (i) the person who sent, or attempted to send, the fax; or
 - (ii) the person who caused the fax to be sent or attempted; and
 - (d) the first person gives the ACMA such information about the fax as the ACMA requires;
- it is the duty of the ACMA to take reasonable steps to assist the first person to identify whichever of the following is applicable:
- (e) the person who sent, or attempted to send, the fax;
 - (f) the person who caused the fax to be sent or attempted.
- (8) Subsection (7) does not limit subsection (4).

140 After paragraph 515A(1)(b)

Insert:

- (ba) a contravention of a code registered under Part 6, where the code applies to participants in a section of the fax marketing industry (within the meaning of Part 6) and deals with one or more matters relating to the fax marketing activities (within the meaning of Part 6) of those participants;
- (bb) a contravention of section 128 in relation to an industry standard, where the standard applies to participants in a section of the fax marketing industry (within the meaning of Part 6) and deals with one or more matters relating to the fax marketing activities (within the meaning of Part 6) of those participants;

*[Minister's second reading speech made in—
House of Representatives on 26 November 2009
Senate on 13 May 2010]*

(233/09)

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