



Telecommunications Legislation Amendment (Consumer Protection) Act 2014

No. 3, 2014

**An Act to amend legislation relating to
telecommunications, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Telecommunications Legislation Amendment (Consumer Protection) Act 2014

No. 3, 2014

An Act to amend legislation relating to telecommunications, and for other purposes

[Assented to 28 February 2014]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Telecommunications Legislation
Amendment (Consumer Protection) Act 2014*.

No. 3, 2014

*Telecommunications Legislation Amendment (Consumer Protection)
Act 2014*

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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.	28 February 2014
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	1 March 2014
3. Schedule 1, Part 2	A single day to be fixed by Proclamation. However, if 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.	28 August 2014
4. Schedule 1, Part 3	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) the commencement of Schedule 1 to the <i>Privacy Amendment (Enhancing Privacy Protection) Act 2012</i> .	12 March 2014 (paragraph (b) applies)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

<i>No. 3, 2014</i>	<i>Telecommunications Legislation Amendment (Consumer Protection) Act 2014</i>	<i>3</i>
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Schedule 1—Amendments

Part 1—General amendments

Do Not Call Register Act 2006

1 Section 4

Insert:

give effect to, in relation to a contract, arrangement or understanding, includes do an act or thing:

- (a) in pursuance of; or
 - (b) in accordance with;
- the contract, arrangement or understanding.

2 Paragraph 11(9)(b)

Repeal the paragraph.

3 Paragraph 12(1)(a)

Repeal the paragraph, substitute:

- (a) there is a reasonable likelihood that the other person will give effect to the contract, arrangement or understanding by:
 - (i) making telemarketing calls; or
 - (ii) causing any or all of the employees or agents of the other person to make telemarketing calls; and

4 Paragraph 12(1)(c)

Omit “covered by”, substitute “that are made in order to give effect to”.

5 Paragraph 12B(10)(b)

Repeal the paragraph.

6 Paragraph 12C(1)(a)

Repeal the paragraph, substitute:

- (a) there is a reasonable likelihood that the other person will give effect to the contract, arrangement or understanding by:
 - (i) sending marketing faxes; or

- (ii) causing any or all of the employees or agents of the other person to send marketing faxes; and

7 Paragraph 12C(1)(c)

Omit “covered by”, substitute “that are sent in order to give effect to”.

Telecommunications Act 1997

8 Subparagraph 117(1)(e)(i)

After “code”, insert “on its website,”.

9 At the end of paragraph 117(1)(e)

Add:

- (iii) the body or association complied with the section 119B publication requirements in relation to any submissions that were received from participants in that section of the industry within that period; and

10 Subparagraph 117(1)(f)(i)

After “code”, insert “on its website,”.

11 At the end of paragraph 117(1)(f)

Add:

- (iii) the body or association complied with the section 119B publication requirements in relation to any submissions that were received from members of the public within that period; and

12 After section 119

Insert:

119A Variation of industry codes

Scope

- (1) This section applies if:
 - (a) an industry code is registered under this Part; and
 - (b) the code:

- (i) applies to participants in a particular section of the telecommunications industry, the e-marketing industry, the telemarketing industry or the fax marketing industry; and
- (ii) deals with one or more matters relating to the telecommunications activities, e-marketing activities, telemarketing activities or fax marketing activities, as the case may be, of those participants; and
- (c) the body or association that developed the code gives a draft variation of the code to the ACMA; and
- (d) disregarding any provisions of the code that are not affected (whether directly or indirectly) by the variation, the ACMA is satisfied that:
 - (i) in a case where the code (as proposed to be varied) deals with matters of substantial relevance to the community—the code (as proposed to be varied) provides appropriate community safeguards for the matters covered by the code (as proposed to be varied); or
 - (ii) in a case where the code (as proposed to be varied) does not deal with matters of substantial relevance to the community—the code (as proposed to be varied) deals with the matters covered by the code (as proposed to be varied) in an appropriate manner; and
- (e) except in a case where the draft variation is of a minor nature—the ACMA is satisfied that, before giving the copy of the draft variation to the ACMA:
 - (i) the body or association published the draft variation on its website and invited participants in that section of the industry to make submissions to the body or association about the draft variation within a specified period; and
 - (ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period; and
 - (iii) the body or association complied with the section 119B publication requirements in relation to any submissions that were received from participants in that section of the industry within that period; and

- (f) except in a case where the draft variation is of a minor nature—the ACMA is satisfied that, before giving the copy of the draft variation to the ACMA:
 - (i) the body or association published the draft variation on its website and invited members of the public to make submissions to the body or association about the draft variation within a specified period; and
 - (ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and
 - (iii) the body or association complied with the section 119B publication requirements in relation to any submissions that were received from members of the public within that period; and
- (g) the ACMA is satisfied that the ACCC has been consulted about the development of the draft variation; and
- (h) except in a case where:
 - (i) the code (as proposed to be varied) 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 (as proposed to be varied) 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 draft variation; and
- (i) the ACMA is satisfied that at least one body or association that represents the interests of consumers has been consulted about the development of the draft variation; and
- (j) in a case where the draft variation deals with a matter set out in paragraph 113(3)(f)—the ACMA is satisfied that the Information Commissioner has been consulted by the body or association about the development of the draft variation before the body or association gave the copy of the draft variation to the ACMA; and
- (k) the ACMA has consulted the Information Commissioner about the draft variation and consequently believes that he or

she is satisfied with the draft variation, if the draft variation deals directly or indirectly with a matter dealt with by:

- (i) the National Privacy Principles (as defined in the *Privacy Act 1988*); or
- (ii) other provisions of that Act that relate to those Principles; or
- (iii) an approved privacy code (as defined in that Act) that binds a participant in that section of the telecommunications industry, the e-marketing industry, the telemarketing industry or the fax marketing industry; or
- (iv) provisions of that Act that relate to the approved privacy code.

Approval of variation

- (2) The ACMA must, by written notice given to the body or association, approve the draft variation.
- (3) If the ACMA approves the draft variation, the code is varied accordingly.

Period for making submissions

- (4) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.

119B Publication requirements for submissions

- (1) This section sets out the publication requirements that apply to submissions that:
 - (a) are about a particular draft; and
 - (b) were received by a body or association as mentioned in:
 - (i) subparagraph 117(1)(e)(iii); or
 - (ii) subparagraph 117(1)(f)(iii); or
 - (iii) subparagraph 119A(1)(e)(iii); or
 - (iv) subparagraph 119A(1)(f)(iii).

Publication of submissions

- (2) The body or association must publish those submissions on its website.
- (3) Subsection (2) has effect subject to subsections (4) and (6).

Confidential or commercially sensitive material

- (4) If:
 - (a) a submission made by a person consists wholly or partly of material that is claimed by the person to be confidential or commercially sensitive; and
 - (b) the person has requested the body or association not to publish the material; and
 - (c) the body or association is satisfied that the material is confidential or commercially sensitive;then:
 - (d) if the submission consists wholly of the material—the body or association is not required to publish the submission on its website; or
 - (e) if:
 - (i) the submission consists partly of the material; and
 - (ii) it is practicable for the body or association to remove the material from the submission;the body or association may remove the material from the submission before publishing the submission on its website; or
 - (f) if:
 - (i) the submission consists partly of the material; and
 - (ii) it is not practicable for the body or association to remove the material from the submission;the body or association is not required to publish the submission on its website.
- (5) If, under subsection (4), the body or association removes material from a submission before publishing the submission on its website, the body or association must publish on its website a statement to the effect that confidential or commercially sensitive material in the submission has not been published.

Defamatory material

- (6) If the body or association considers that a submission consists wholly or partly of material that is, or is likely to be, defamatory:
- (a) if the submission consists wholly of the material—the body or association is not required to publish the submission on its website; or
 - (b) if:
 - (i) the submission consists partly of the material; and
 - (ii) it is practicable for the body or association to remove the material from the submission;the body or association may remove the material from the submission before publishing the submission on its website; or
 - (c) if:
 - (i) the submission consists partly of the material; and
 - (ii) it is not practicable for the body or association to remove the material from the submission;the body or association is not required to publish the submission on its website.
- (7) If, under subsection (6), the body or association removes material from a submission before publishing the submission on its website, the body or association must publish on its website a statement to the effect that material in the submission has not been published on the grounds that the material is, or is likely to be, defamatory.

Statistical statement

- (8) The body or association must publish on its website a statement that sets out:
- (a) the total number of those submissions; and
 - (b) if a number of those submissions have not been published, or have been published in a modified form, because of subsection (4) or (6)—that number.

13 Subsection 120(1)

Omit “(1)”.

14 Subsection 120(1)

Omit “are to”, substitute “may”.

15 Subsection 120(2)

Repeal the subsection.

16 Paragraph 136(1)(a)

After “this Part”, insert “, as those codes are in force from time to time”.

17 Division 6A of Part 6 (heading)

After “development”, insert “or variation”.

18 Section 136A (heading)

After “development”, insert “or variation”.

19 Subsection 136A(1)

After “develop”, insert “or vary”.

20 Subsection 136A(1)

After “developing the code”, insert “or varying the code, as the case may be”.

21 Subparagraph 136A(2)(c)(i)

After “developing the code”, insert “or varying the code, as the case may be”.

22 Section 136B (heading)

After “development”, insert “or variation”.

23 Before subsection 136B(1)

Insert:

Development of code

24 Subsection 136B(1)

After “declaration in relation to”, insert “the development of”.

25 After subsection 136B(2)

Insert:

Variation of code

- (2A) If a body or association makes an application under subsection 136A(1) for a declaration in relation to the variation of a code, the ACMA must make the declaration if it is satisfied that:
- (a) the body or association represents the section of the telecommunications industry referred to in paragraph 136A(1)(a); and
 - (b) the code is registered under this Part; and
 - (c) the code deals wholly or mainly with one or more matters relating to the relationship between carriage service providers and their retail customers; and
 - (d) the process for varying the code, as outlined in the application, is likely to ensure that the interests of those retail customers are adequately represented in relation to the variation of the code; and
 - (e) the total of the refundable costs likely to be incurred by the body or association in varying the code, as set out in the estimate that accompanied the application, is reasonable.
- (2B) If the ACMA is not satisfied as to the matters set out in subsection (2A), the ACMA must, by written notice given to the applicant, refuse to make the declaration.

General provisions

26 Section 136C (heading)

After “developing”, insert “or varying”.

27 Subsection 136C(1) (heading)

Repeal the heading, substitute:

Reimbursement of costs—development of code

28 After subsection 136C(3)

Insert:

Reimbursement of costs—variation of code

(3A) If:

- (a) a section 136B declaration was made in relation to the variation of an industry code by a body or association; and
- (b) when the section 136B declaration was in force, the body or association gave a copy of the variation to the ACMA under section 119A; and
- (c) the ACMA is satisfied that the code deals wholly or mainly with one or more matters relating to the relationship between carriage service providers and their retail customers; and
- (d) the ACMA is satisfied that the process for the variation of the code ensured that the interests of those retail customers were adequately represented in relation to the variation of the code; and
- (e) the copy of the variation was accompanied by:
 - (i) a written statement itemising one or more costs incurred by the body or association in varying the code; and
 - (ii) a written claim for reimbursement of those costs; and
 - (iii) a written declaration by an approved auditor that he or she is of the opinion that the subparagraph (i) statement complies with the approved auditing requirements; and
 - (iv) a written statement describing the process for the variation of the code; and
- (f) the ACMA is satisfied that each of the costs itemised in the subparagraph (e)(i) statement:
 - (i) is a refundable cost incurred by the body or association in varying the code; and
 - (ii) was incurred when the section 136B declaration was in force;

the ACMA must, by written notice given to the body or association, determine that the body or association is entitled to be paid a specified amount.

Note: For *refundable cost*, see section 136E.

(3B) The specified amount must be equal to whichever is the lesser of the following:

- (a) the total of the costs itemised in the subparagraph (3A)(e)(i) statement;

(b) the estimate that accompanied the application for the section 136B declaration.

(3C) The ACMA, on behalf of the Commonwealth, must pay the specified amount to the body or association within 30 days after the day on which the body or association was notified under subsection (3A) of its entitlement to be paid that amount.

Appropriation

29 Subsection 136E(1)

After “developing” (first occurring), insert “or varying”.

30 Subsection 136E(1)

After “developing the code”, insert “or varying the code, as the case may be,”.

Part 2—Telecommunications Industry Ombudsman scheme

Telecommunications (Consumer Protection and Service Standards) Act 1999

31 At the end of section 128

Add:

- (8) The scheme must comply with any standards determined under subsection (9).
- (9) The Minister may, by legislative instrument, determine standards for the purposes of subsection (8).
- (10) In making a determination under subsection (9), the Minister must have regard to the following matters:
 - (a) accessibility;
 - (b) independence;
 - (c) fairness;
 - (d) accountability;
 - (e) efficiency;
 - (f) effectiveness;
 - (g) such other matters (if any) as the Minister considers relevant.
- (11) Before making a determination under subsection (9), the Minister must consult:
 - (a) the Telecommunications Industry Ombudsman; and
 - (b) the ACMA.

32 At the end of Part 6

Add:

133A Reviews of the Telecommunications Industry Ombudsman scheme

- (1) The Telecommunications Industry Ombudsman must cause to be conducted reviews of the operation of the Telecommunications Industry Ombudsman scheme.

Timing of reviews

- (2) The first review must be completed within 3 years after the commencement of this section.
- (3) Each subsequent review must be completed within 5 years after the completion of the previous review.

Independent reviews

- (4) A review must be conducted by a person or body who is independent of:
- (a) the Telecommunications Industry Ombudsman; and
 - (b) the telecommunications industry.

Consultation

- (5) A review must make provision for:
- (a) public consultation; and
 - (b) consultation with:
 - (i) the Telecommunications Industry Ombudsman; and
 - (ii) the ACMA.

Report of review

- (6) The person or body conducting a review must:
- (a) prepare a report of the review; and
 - (b) give the report to the Telecommunications Industry Ombudsman.
- (7) The Telecommunications Industry Ombudsman must:
- (a) give a copy of the report to the Minister; and
 - (b) publish the report on the Telecommunications Industry Ombudsman's website.

Response to recommendations in report

- (8) If a report of a review sets out one or more recommendations to the Telecommunications Industry Ombudsman, the Telecommunications Industry Ombudsman must, within 6 months after receiving the report:
- (a) prepare a statement setting out the Telecommunications Industry Ombudsman's response to each of the recommendations; and
 - (b) publish a copy of the statement on the Telecommunications Industry Ombudsman's website; and
 - (c) give a copy of the statement to the Minister.

Completion of review

- (9) For the purposes of this section, a review is **completed** when the report of the review is given to the Telecommunications Industry Ombudsman.

Part 3—Australian Privacy Principles

Telecommunications Act 1997

33 Subparagraph 119A(1)(k)(i)

Omit “National Privacy Principles (as defined in the *Privacy Act 1988*)”, substitute “Australian Privacy Principles”.

*[Minister’s second reading speech made in—
House of Representatives on 14 November 2013
Senate on 11 February 2014]*

(196/13)
