2004-2005-2006

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Do Not Call Register (Consequential Amendments) Bill 2006

No.  , 2006

(Communications, Information Technology and the Arts)

A Bill for an Act to deal with consequential matters relating to the enactment of the Do Not Call Register Act 2006, and for other purposes
Contents

1 Short title.................................................................1
2 Commencement.........................................................1
3 Schedule(s)..............................................................2

Schedule 1—Amendments

Part 1—Amendments commencing on Royal Assent

Telecommunications Act 1997

Part 2—Amendments commencing at the same time as Part 2
of the Do Not Call Register Act 2006 commences

Australian Communications and Media Authority Act 2005
Telecommunications Act 1997
Telecommunications (Carrier Licence Charges) Act 1997

20
A Bill for an Act to deal with consequential matters relating to the enactment of the *Do Not Call Register Act 2006*, and for other purposes

The Parliament of Australia enacts:

1 **Short title**

This Act may be cited as the *Do Not Call Register (Consequential Amendments) Act 2006*.

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.

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Do Not Call Register (Consequential Amendments) Bill 2006 No. 5, 2006 1
## Commencement information

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
</tr>
<tr>
<td>2. Schedule 1, Part 1</td>
<td>The day on which this Act receives the Royal Assent.</td>
</tr>
<tr>
<td>3. Schedule 1, Part 2</td>
<td>At the same time as Part 2 of the <em>Do Not Call Register Act 2006</em> commences.</td>
</tr>
</tbody>
</table>

**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 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—Amendments commencing on Royal Assent

Telecommunications Act 1997

1 At the end of subsection 3(2)
   Add:
   ; (k) to promote responsible practices in relation to the making of
telemarketing calls.

2 Section 5
   Omit “or the e-marketing industry” (wherever occurring), substitute “,
   the e-marketing industry or the telemarketing industry”.

3 Section 7
   Insert:
   Australian number has the same meaning as in the Do Not Call
   Register Act 2006.

4 Section 7
   Insert:
   standard questionnaire-based research means research that
   involves people being asked to answer one or more standard
   questions, but does not include:
   (a) opinion polling; or
   (b) research of a kind specified in the regulations.

5 Section 7
   Insert:
   telemarketing call means:
   (a) a telemarketing call (within the meaning of the Do Not Call
   Register Act 2006) that is made to an Australian number; or
   (b) a voice call (within the meaning of the Do Not Call Register
   Act 2006) that is made to an Australian number, where,
   having regard to:
Amendments Schedule 1
Amendments commencing on Royal Assent Part 1

6 Section 7
Insert:

   telemarketing industry means an industry that involves carrying on a telemarketing activity (as defined by section 109B).

7 Section 106
Omit “or the e-marketing industry” (wherever occurring), substitute “, the e-marketing industry or the telemarketing industry”.

8 After section 109A
Insert:

109B Telemarketing activity
(1) For the purposes of this Part, a telemarketing 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 telemarketing calls 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 telemarketing calls 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 telemarketing calls 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 telemarketing calls 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 telemarketing calls 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 telemarketing calls 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 telemarketing calls 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 telemarketing calls 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 telemarketing calls 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 telemarketing calls 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 telemarketing calls 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 telemarketing calls 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 telemarketing calls to solicit donations; or
(b) using telemarketing calls to conduct opinion polling; or
(c) using telemarketing calls to carry out standard questionnaire-based research.

(5) An expression (other than telemarketing call) used in this section and in section 5 of the Do Not Call Register Act 2006 has the same meaning in this section as it has in that section.

9 After section 110A

Insert:

110B Sections of the telemarketing industry

(1) For the purposes of this Part, sections of the telemarketing 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, telemarketing activities constitute a single section of the telemarketing 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 telemarketing activity constitute a section of the telemarketing 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 telemarketing 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 telemarketing industry mentioned in subsection (2) or determined under subsection (3); and
(c) may be subsets of a section of the telemarketing industry mentioned in subsection (2) or determined under subsection (3).

(7) Subsection (6) does not, by implication, limit subsection (3).

10 After section 111A

Insert:

111AA Participants in a section of the telemarketing industry

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

11 After subsection 112(1A)

Insert:

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

12 Subsection 112(2)

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

13 Subsection 112(2)

Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

14 After subsection 112(3B)

Insert:

(3C) 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 telemarketing 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 telemarketing industry.

15 Subsection 112(4)
Omit “and (3B)”, substitute “,(3B) and (3C)”.

16 Subsection 113(2)
Omit “or the e-marketing industry”, substitute “, the e-marketing 
industry or the telemarketing industry”.

17 At the end of subsection 113(3)
Add:
; (w) record-keeping practices to be followed in relation to 
telemarketing calls made or attempted to be made;
(x) action to be taken to limit the total number of telemarketing 
calls attempted to be made, by a particular participant in a 
section of the telemarketing industry, during a particular 
period, where the recipient answers the attempted call, but 
the attempted call does not have any content;
(y) action to be taken to limit the total number of telemarketing 
calls made, or attempted to be made, by a particular 
participant in a section of the telemarketing industry, during a 
particular period to a particular telephone number.

18 Paragraph 117(1)(a)
Omit “or the e-marketing industry”, substitute “, the e-marketing 
industry or the telemarketing industry”.

19 Paragraph 117(1)(b)
Omit “or e-marketing activities”, substitute “, e-marketing activities or 
telemarketing activities”.

20 Paragraph 117(1)(h)
Before “the ACMA”, insert “except in a case where 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—”.
21 **Subparagraph 117(1)(k)(iii)**

   Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

22 **Subsection 118(1)**

   Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

23 **Paragraph 118(1)(a)**

   Omit “or e-marketing activities”, substitute “, e-marketing activities or telemarketing activities”.

24 **Subsection 118(3)**

   Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

25 **Paragraph 118(4A)(c)**

   Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

26 **Subsection 119(1)**

   Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

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

27 **Paragraph 119(1)(b)**

   Omit “or e-marketing activities”, substitute “, e-marketing activities or telemarketing activities”.

28 **Subparagraph 123(1)(a)(i)**

   Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

29 **Subparagraph 123(1)(a)(ii)**

   Omit “e-marketing activities”, substitute “, e-marketing activities or telemarketing activities”.

30 **Paragraph 124(1)(a)**

   Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.
Amendments Schedule 1
Amendments commencing on Royal Assent Part 1

31 Subparagraph 124(1)(c)(ii)
Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

32 Subparagraph 125(1)(a)(i)
Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

33 Subparagraph 125(1)(a)(ii)
Omit “or e-marketing activities”, substitute “, e-marketing activities or telemarketing activities”.

34 Subsection 125(7)
Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

35 Subsection 125(7)
Omit “or e-marketing activities”, substitute “, e-marketing activities or telemarketing activities”.

36 After section 125
Insert:

125A ACMA must determine certain industry standards relating to the telemarketing industry

(1) Before the commencement of Part 2 of the Do Not Call Register Act 2006, the ACMA must, by legislative instrument, determine a standard that:
(a) applies to participants in each section of the telemarketing industry; and
(b) deals with the following matters relating to the telemarketing activities of those participants:
(i) restricting the hours and/or days during which telemarketing calls may be made or attempted to be made;
(ii) requiring that a telemarketing call must contain specified information about the relevant participant;
(iii) requiring that, if a person other than the relevant participant caused a telemarketing call to be made, the call must contain specified information about the person who caused the call to be made;
(iv) requiring the relevant participant to terminate a telemarketing call if a specified event happens;
(v) requiring the relevant participant to ensure that calling line identification is enabled in respect of the making of a telemarketing call; and

(c) is expressed to commence at the same time as the commencement of Part 2 of the Do Not Call Register Act 2006.

(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 telemarketing 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 Part 2 of the Do Not Call Register Act 2006.

37 Subsection 130(1)
Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

38 Paragraphs 130(1)(a) and (b)
Omit “or e-marketing activities”, substitute “, e-marketing activities or telemarketing activities”.

39 Subsection 133(1)
Omit “and the Telecommunications Industry Ombudsman”.

40 After subsection 133(1)
Insert:
(1A) Before determining or varying an industry standard (other than an industry standard under section 125A), the ACMA must consult the Telecommunications Industry Ombudsman.

41 At the end of Division 5 of Part 6

Add:

135A Consultation with the States and Territories

Before determining or varying an industry standard under section 125A, the ACMA must consult:
(a) each State; and
(b) the Australian Capital Territory; and
(c) the Northern Territory.
Part 2—Amendments commencing at the same time as Part 2 of the Do Not Call Register Act 2006 commences

Australian Communications and Media Authority Act 2005

42 After subparagraph 8(1)(j)(i)

Insert:

(ia) the Do Not Call Register Act 2006; or

Telecommunications Act 1997

43 Section 7 (after paragraph (h) of the definition of civil penalty provision)

Insert:

(i) subsection 139(1); or
(j) subsection 139(2); or

44 Section 7 (after paragraph (c) of the definition of ACMA’s telecommunications powers)

Insert:

(ca) the Do Not Call Register Act 2006; or

45 Paragraph 121(1)(a)

Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

46 Subsection 122(1)

Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

47 Subsection 128(1)

Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

48 Subsection 129(1)
Amendments Schedule 1
Amendments commencing at the same time as Part 2 of the Do Not Call Register Act 2006 commences Part 2

Omit “or the e-marketing industry”, substitute “, the e-marketing industry or the telemarketing industry”.

**49 At the end of Division 7 of Part 6**

Add:

**139 Agreements for the carrying on of telemarketing activities must require compliance with this Part**

(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 carry on one or more telemarketing activities; and

(b) the contract, arrangement or understanding does not contain an express provision to the effect that the other person will comply with this Part in relation to the telemarketing activities 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 31 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.
50 Subsection 492(5) (at the end of the definition of this Act)

Add:
; and (c) the Do Not Call Register Act 2006 and regulations under that Act.

51 Subsection 502(5) (at the end of the definition of this Act)

Add:
; and (c) the Do Not Call Register Act 2006 and regulations under that Act.

52 After paragraph 508(ab)

Insert:
(ac) a contravention of the Do Not Call Register Act 2006 or regulations under that Act;

53 At the end of section 509

Add:

(5) 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 telemarketing industry (within the meaning of Part 6) and deals with one or more matters relating to the telemarketing 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 telemarketing industry (within the meaning of Part 6) and deals with one or more matters relating to the telemarketing 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 voice call (within the meaning of the Do Not Call Register Act 2006) made, or attempted to be made, to an Australian number; and

(c) the first person does not have sufficient information to identify:
(i) the person who made, or attempted to make, the call; or
(ii) the person who caused the call to be made or attempted;

(d) the first person gives the ACMA such information about the call 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 made, or attempted to make, the call;
(f) the person who caused the call to be made or attempted.

(6) Subsection (5) does not limit subsection (4).

54 After paragraph 510(1)(ab)

Insert:

(ac) in the case of a matter covered by paragraph 508(ac)—the ACMA has reason to suspect that a person may have contravened the Do Not Call Register Act 2006 or regulations under that Act; or

55 Paragraph 512(1A)(a)

Repeal the paragraph, substitute:

(a) the matter relates to a possible breach of:

(i) the Spam Act 2003 or regulations under that Act; or
(ii) the Do Not Call Register Act 2006 or regulations under that Act; and

56 Paragraph 512(6)(a)

Repeal the paragraph, substitute:

(a) the matter relates to a possible breach of:

(i) the Spam Act 2003 or regulations under that Act; or
(ii) the Do Not Call Register Act 2006 or regulations under that Act; and

57 Paragraph 513(2)(a)

Repeal the paragraph, substitute:

(a) the matter relates to a possible breach of:

(i) the Spam Act 2003 or regulations under that Act; or
(ii) the Do Not Call Register Act 2006 or regulations under that Act; and
58 After section 515

Insert:

515A Reference of matters to Privacy Commissioner

(1) This section applies to a complaint about any of the following matters:

(a) a contravention of a code registered under Part 6, where the code applies to participants in a section of the telemarketing industry (within the meaning of Part 6) and deals with one or more matters relating to the telemarketing activities (within the meaning of Part 6) of those participants;

(b) a contravention of section 128 in relation to an industry standard, where the standard applies to participants in a section of the telemarketing industry (within the meaning of Part 6) and deals with one or more matters relating to the telemarketing activities (within the meaning of Part 6) of those participants;

(c) a contravention of the Do Not Call Register Act 2006 or regulations under that Act.

(2) If, before the ACMA starts, or after it has started, an investigation of a matter to which a complaint relates, the ACMA forms the opinion that:

(a) a complaint relating to that matter has been, or could have been, made by the complainant to the Privacy Commissioner under section 36 of the Privacy Act 1988; and

(b) the matter could be more conveniently or effectively dealt with by the Privacy Commissioner;

the ACMA may decide not to investigate the matter, or not to investigate the matter further, as the case may be.

(3) If the ACMA decides as mentioned in subsection (2), it must:

(a) transfer the complaint to the Privacy Commissioner; and

(b) give written notice to the complainant stating that the complaint has been so transferred; and

(c) give the Privacy Commissioner any information or documents that relate to the complaint and that are in the ACMA’s possession or under its control.
(4) A complaint transferred under subsection (3) to the Privacy Commissioner is taken to be a complaint made to the Privacy Commissioner under section 36 of the Privacy Act 1988.

59 Paragraph 518(3)(a)
Repeal the paragraph, substitute:
(a) the matter relates to a possible breach of:
   (i) the Spam Act 2003 or regulations under that Act; or
   (ii) the Do Not Call Register Act 2006 or regulations under that Act; and

60 After subsection 570(4)
Insert:
(4A) Subsections (3) and (4) do not apply to a contravention of subsection 139(1) or (2).
(4B) Section 25 of the Do Not Call Register Act 2006 applies to a contravention of subsection 139(1) or (2) of this Act in a corresponding way to the way in which it applies to a contravention of subsection 12(1) or (2) of the Do Not Call Register Act 2006, subject to the following modifications:
   (a) each reference in section 25 of the Do Not Call Register Act 2006 to subsection 24(1) of that Act includes a reference to subsection (1) of this section;
   (b) each reference in section 25 of the Do Not Call Register Act 2006 to a civil penalty provision includes a reference to subsection 139(1) or (2) of this Act;
   (c) each reference in section 25 of the Do Not Call Register Act 2006 to a civil penalty order includes a reference to an order under subsection (1) of this section.

61 Subsection 572B(6) (definition of this Act)
Repeal the definition, substitute:
this Act includes:
   (a) the Telecommunications (Consumer Protection and Service Standards) Act 1999; and
   (b) the Do Not Call Register Act 2006.

62 Section 574A (at the end of the definition of this Act)
Amendments commencing at the same time as Part 2 of the Do Not Call Register Act 2006 commences Part 2

1 Add:
   ; and (c) the Do Not Call Register Act 2006 and regulations under that Act.

63 Section 582
After “regulations under the Spam Act 2003,” (wherever occurring), insert “the Do Not Call Register Act 2006, regulations under the Do Not Call Register Act 2006;”.

64 Section 582
After “Instruments under this Act, the Spam Act 2003”, insert “, the Do Not Call Register Act 2006”.

65 Subsection 585(2) (definition of civil penalty provision)
Repeal the definition, substitute:

   civil penalty provision includes:
   (a) a civil penalty provision within the meaning of the Spam Act 2003; and
   (b) a civil penalty provision within the meaning of the Do Not Call Register Act 2006.

66 Subsection 585(2) (at the end of the definition of this Act)
Add:
   ; and (c) the Do Not Call Register Act 2006 and regulations under that Act.

67 Subsection 586(2) (at the end of the definition of this Act)
Add:
   ; and (c) the Do Not Call Register Act 2006 and regulations under that Act.

68 Subsection 587(4) (at the end of the definition of this Act)
Add:
   ; and (c) the Do Not Call Register Act 2006 and regulations under that Act.

69 Subsection 589(6) (at the end of the definition of this Act)
Add:
Amendments Schedule 1
Amendments commencing at the same time as Part 2 of the Do Not Call Register Act 2006 commences Part 2

70 Subsection 591(3) (at the end of the definition of this Act)
Add:
; and (c) the Do Not Call Register Act 2006 and regulations under that Act.

71 Subsection 592(2) (at the end of the definition of this Act)
Add:
; and (c) the Do Not Call Register Act 2006 and regulations under that Act.

Telecommunications (Carrier Licence Charges) Act 1997

72 Subsection 15(4) (definition of ACMA’s telecommunications functions)
Omit “Telecommunications Act 1997.”, substitute:
Telecommunications Act 1997, but does not include functions conferred on the ACMA by or under:
(a) the Do Not Call Register Act 2006; or
(b) the Telecommunications Act 1997 to the extent to which that Act relates to the Do Not Call Register Act 2006; or
(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).

73 Subsection 15(4) (definition of ACMA’s telecommunications powers)
Omit “Telecommunications Act 1997.”, substitute:
Telecommunications Act 1997, but does not include powers conferred on the ACMA by or under:
(a) the Do Not Call Register Act 2006; or
(b) the Telecommunications Act 1997 to the extent to which that Act relates to the Do Not Call Register Act 2006; or
(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).