Do Not Call Register Legislation Amendment Bill 2009

No.     , 2009

(Broadband, Communications and the Digital Economy)

A Bill for an Act to amend the Do Not Call Register Act 2006, and for other purposes
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A Bill for an Act to amend 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 Legislation Amendment Act 2009*.

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

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<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
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<td>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.</td>
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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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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:
Schedule 1  Amendments

Part 1  Amendment of the Do Not Call Register Act 2006

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.
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.

12 Section 4

Insert:

express consent does not include registered consent.

13 Section 4

Insert:

fax has a meaning affected by section 5A.

14 Section 4

Insert:

industry classification has the meaning given by section 5C.

15 Section 4

Insert:

marketing fax has the meaning given by section 5B.

16 Section 4

Insert:
Schedule 1 Amendments
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registered consent means consent entered on the Do Not Call Register.

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.
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(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.

5C Industry classification

(1) The ACMA may, by legislative instrument, determine that an activity ascertained in accordance with the determination is an industry classification for the purposes of this Act.

Note: See also section 589 of the Telecommunications Act 1997 (instruments may provide for matters by reference to other instruments).

(2) The ACMA must ensure that a determination is in force under subsection (1) at all times after the commencement of this section.

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 received information under paragraph 19(2)(e) 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

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

(iv) under paragraph 19(2)(g), 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”.

26 After subsection 11(3)

Insert:

(3A) Subsection (1) does not apply if:

(a) the number was included on a list that was submitted by the person under subsection 19(1); and

(b) during the 30-day period ending at the end of the day on which the call was made, the person received information under paragraph 19(2)(d) in response to the submission of the list, and that information stated:

(i) that the number was registered on the Do Not Call Register; and

(ii) that a consent for that number was registered on the Do Not Call Register in relation to telemarketing calls about an activity covered by a particular industry classification; and

(c) the call was about an activity covered by the industry classification.

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.

27 Subsection 11(6)

After “(3),”, insert “(3A),”.

28 Paragraph 12(1)(b)

Omit “telephone numbers that, under section 14, are eligible to be entered on the Do Not Call Register”, substitute “Australian numbers”.

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

(4) 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, the person received information
under paragraph 19(2)(d) in response to the submission of the
list, and that information stated:
(i) that the number was registered on the Do Not Call
Register; and
(ii) that a consent for that number was registered on the Do
Not Call Register in relation to marketing faxes about
an activity covered by a particular industry
classification; and
(c) the fax was about an activity covered by the industry
classification.

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.
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(7) A person who wishes to rely on subsection (2), (3), (4), (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; 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”.

31 Subsection 13(1)

After “numbers”, insert “, and related consents,”.

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.

34 Section 15

Before “An application for”, insert “(1)”.

35 Section 15

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

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

Omit “telephone”.

37 After paragraph 15(b)

Insert:

(ba) may state that the applicant:

(i) consents to the making of telemarketing calls to the number if such a call is about an activity covered by a specified industry classification; and

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(ii) wishes to have that consent entered on the Do Not Call Register; and

(bb) may state that the applicant:

(i) consents to the sending of marketing faxes to the number if such a fax is about an activity covered by a specified industry classification; and

(ii) wishes to have that consent entered on the Do Not Call Register; and

38 At the end of section 15

Add:

(2) An application may be made even if the number is already entered on the Do Not Call Register.

Note 1: If there are no registered consents for a number, subsection (2) enables an application for the re-registration of the number:

(a) with one or more consents; or

(b) without any consents.

Note 2: If there are registered consents for a number, subsection (2) enables an application for the re-registration of the number:

(a) with a replacement set of consents; or

(b) without any consents.

Note 3: See also paragraph 16(f).

(3) An application may set out 2 or more consents under paragraph (1)(ba).

(4) An application may set out 2 or more consents under paragraph (1)(bb).

39 Section 16

Repeal the section, substitute:

16 Registration

If an application is made under section 15 for an Australian number to be entered on the Do Not Call Register, then:

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

must:

(c) enter the number on the Do Not Call Register; and

(d) if the application stated that the applicant:

(i) consents to the making of telemarketing calls to the number if such a call is about an activity covered by a specified industry classification; and

(ii) wishes to have that consent entered on the Do Not Call Register;

enter that consent on the Do Not Call Register; and

(e) if the application stated that the applicant:

(i) consents to the sending of marketing faxes to the number if such a fax is about an activity covered by a specified industry classification; and

(ii) wishes to have that consent entered on the Do Not Call Register;

enter that consent on the Do Not Call Register; and

(f) if the application was made when the number was already entered on the Do Not Call Register—immediately before taking action under paragraph (c), (d) or (e), remove from the Do Not Call Register:

(i) the previous entry of the number; and

(ii) any previous entries of consents for the number.

40 Subsection 17(1)

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

41 Subsection 17(1)

After “number”, insert “or a consent”.

42 Paragraph 17(1)(b)

Repeal the paragraph, substitute:

(b) remains in force for 3 years, unless sooner removed from the Do Not Call Register:

(i) under paragraph 16(f); or
(ii) in accordance with a determination under subsection 18(1).

43 Subsection 17(2)
Omit “a telephone”, substitute “an Australian”.

44 Subsection 17(2)
After “number” (first occurring), insert “or a consent”.

45 Subsection 17(2)
After “the number”, insert “or consent”.

46 Subsection 17(3)
Omit “a telephone”, substitute “an Australian”.

47 Subsection 17(3)
After “number” (first occurring), insert “or a consent”.

48 Subsection 17(3)
After “the number”, insert “or consent”.

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:
      (i) which numbers (if any) on the access-seeker’s list are registered on the Do Not Call Register; and
(ii) if any consents for numbers on the access-seeker’s list are registered on the Do Not Call Register—of those consents; 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 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—inform the access-seeker which numbers (if any) on the access-seeker’s list are not registered on the Do Not Call Register; and

(g) 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), (e) or (f)”.

55 Paragraph 20(1)(c)
Omit “subsection 19(3)”, substitute “paragraph 19(2)(g)”.

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: Designed 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:
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
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(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:
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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
Schedule 1 Amendments

Part 1 Amendment of the Do Not Call Register Act 2006

1. (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
2. (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
3. (e) if the fax relates to goods or services—the institution is the supplier, or prospective supplier, of the goods or services; and
4. (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
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)”.

74 After paragraph 2(a) of Schedule 2
Insert:

(aa) registered consent; or

75 At the end of clause 2 of Schedule 2
Add:

Note: Express consent does not include registered consent—see the
definition of express consent in section 4.

76 After clause 3 of Schedule 2
Insert:

3A Duration of registered consent
(1) A registered consent cannot be withdrawn.
(2) Subclause (1) does not prevent the entry of the consent from being removed from the Do Not Call Register:
   (a) under paragraph 16(f); or
   (b) in accordance with a determination under subsection 18(1).

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:

6 Determinations about consent—telemarketing calls made to business numbers

(1) The ACMA may, by legislative instrument, determine that, for the purposes of the application of this Act to a telemarketing call made to a business number, the consent of the relevant account-holder may not be inferred in the circumstances specified in the determination.
Schedule 1 Amendments
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(2) The ACMA may, by legislative instrument, determine that, for the purposes of the application of this Act to a telemarketing call made 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
      (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.

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
      (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)(c) of the *Do Not Call Register Act 2006*;

(e) the amendment of paragraph 20(1)(d) 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.
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:
Schedule 1  Amendments
Part 2  Other amendments

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:

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Do Not Call Register Legislation Amendment Bill 2009 No. , 2009 39
(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”.

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Do Not Call Register Legislation Amendment Bill 2009 No. , 2009
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 \textit{first person}) wishes to make a complaint about:
      \begin{itemize}
      \item[(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
      \item[(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;