EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Communications, Information Technology and the Arts

Do Not Call Register Act 2006

Proclamation

Subsection 2(1) of the Do Not Call Register Act 2006 (the Act) provides that Part 2 of the Act commences on a single day to be fixed by Proclamation. However, if any of the provisions in Part 2 do not commence within twelve months of the date the Act receives the Royal Assent, then those provisions commence on the first day after the end of that twelve-month period. The Act received the Royal Assent on 30 June 2006.

The purpose of the accompanying Proclamation is to fix 31 May 2007 as the day on which Part 2 of the Act commences.

Sections 1 to 9, Part 3 and sections 41 and 46 of the Act commenced on Royal Assent. Parts 4 and 5, sections 39, 40 and 42 to 45, and Schedules 1 to 3 commence at the same time as Part 2.

The Act provides for the establishment of a Do Not Call Register which will enable consumers to opt out of receiving unsolicited telemarketing calls. Part 2 of the Act sets out the rules about making telemarketing calls. It provides that unsolicited telemarketing calls must not be made to a number registered on the Do Not Call Register, subject to a number of limited exceptions, and provides that agreements relating to the making of telemarketing calls must require compliance with the Act.

The remaining provisions which will commence at the same time as Part 2 either relate to the rules about making unsolicited telemarketing calls in Part 2 by providing for their enforcement or setting out relevant definitions, or are miscellaneous provisions which did not require immediate commencement. They have the following effect:

- Part 4 sets out the civil penalty regime that applies for a contravention of a civil penalty provision (that is the telemarketing rules established in Part 2 and section 44) and Part 5 provides injunctive powers to the Federal Court or the Federal Magistrates Court in relation to contravention of these provisions.
- Section 39 provides a meaning for the term ‘nominee’ that is relevant to the rules about making telemarketing calls in Part 2. Paragraph 11(2)(b) provides that a person can make a telemarketing call to a number on the Do Not call Register with the consent of a nominee of the relevant telephone account-holder.
- Section 40 provides an enforcement option for a breach of a civil penalty provision (that is the telemarketing rules established in Part 2 and section 44).
- Sections 42 to 45 are miscellaneous provisions which relate to the operation of State and Territory laws, an implied freedom of political communication, giving effect to international conventions and a provision requiring a three year review of the Act.
Schedule 1 to the Act defines the expression ‘designated telemarketing call’. ‘Designated telemarketing call’ is an expression used in Part 2 of the Act. Such calls are exempt from the prohibition on making an unsolicited telemarketing calls to a number registered on the Do Not Call Register in section 11 of the Act.

Schedule 2 to the Act defines the expression ‘consent’. The concept of consent is relevant to section 11 of the Act which provides that the prohibition on making telemarketing calls to a number registered on the Do Not Call Register does not apply if the relevant telephone account-holder or their nominee has consented to the making of the call.

Schedule 3 to the Act sets up a system of infringement notices for contraventions of a civil penalty provision (that is rules relating to telemarketing calls set out in Part 2 of the Act and section 44) as an alternative to the institution of proceedings in the Federal Court or the Federal Magistrates Court.

The commencement of the provisions in Part 2 of the Act was delayed in order to enable individuals or companies that currently participate in telemarketing activities to change their method of marketing prior to the prohibition on making unsolicited telemarketing calls to a number on the Do Not Call Register coming into effect. The commencement date fixed by the accompanying Proclamation allows consumers to take early advantage of opting out of receiving unsolicited telemarketing calls whilst giving businesses eleven months since the Act received Royal Assent to adjust their telemarketing practices. The commencement date was chosen after consultation with the Australian Communications and Media Authority, which is responsible for enforcing the Act.

The accompanying Proclamation is a legislative instrument for the purposes of the Legislative Instruments Act 2003 (see paragraph 6(e) of that Act), but is not subject to disallowance (see item 42 in the table in subsection 44(2) of that Act).