Explanatory Statement

Issued by the authority of the Australian Communications and Media Authority

DO NOT CALL REGISTER (ACCESS TO REGISTER) AMENDMENT DETERMINATION 2010 (No. 1)

Do Not Call Register Act 2006

Background, purpose and legislative basis

This document provides an explanation of the Do Not Call Register (Access to Register) Amendment Determination 2010 (No. 1) (the Amendment Determination) made under subsection 20(1) of the Do Not Call Register Act 2006 (the Act).

The Act requires the ACMA to keep, or to arrange for another person (the contracted service provider) to keep, the Do Not Call Register (the Register). Subsection 20(1) of the Act allows the ACMA to make a determination providing for the manner in which lists of numbers can be submitted to the ACMA or the contracted service provider to be checked against the Register, and the manner in which the ACMA must provide the results of that check. This process of ‘washing’ access-seekers’ lists help access-seekers to avoid breaching the Act (see subsections 11(3) and 12B(3) of the Act).

On 27 April 2007, ACMA made the Do Not Call Register (Access to Register) Determination 2007 (the Determination). The Determination, among other things, set out the manner in which access-seekers may submit a list of telephone numbers for washing and the manner in which the ACMA or the contracted service provider is to provide the information to the access-seeker.

The Do Not Call Register Legislation Amendment Act 2010 (the Amending Act) was made on 18 May 2010. The operative provisions of the Amending Act come into effect on 30 May 2010. The Amending Act makes changes to the Act to, among other things, extend the numbers eligible for registration on the Register to include emergency service numbers, numbers used or maintained exclusively for use by a government body and numbers used or maintained exclusively for transmitting and/or receiving faxes.

The Amendment Determination makes consequential amendments to the Determination to ensure that it is consistent with the amendments to the Act.

Consultation

The amendments made by the Amendment Determination are consequential amendments necessary to be made to ensure that access to the Register is provided in accordance with the Act as amended. They do not substantially alter the existing arrangements beyond ensuring that the arrangements relating to access to the Register are relevant to the expanded Register, including registered numbers used or maintained exclusively for transmitting and/or receiving faxes, numbers used by a government body and emergency service numbers.

Prior to the Amending Act being made the Department of Broadband, Communications and the Digital Economy (the Department) engaged in extensive consultation with the public and with industry in relation to the proposed changes. The Bill was also subject to review by the Senate Environment, Communications and Arts Legislation Committee. Accordingly, the ACMA considers that appropriate consultation has already been undertaken on the effect of these amendments and considers that further consultation is unnecessary in the circumstances.
**Regulatory impact**

In September 2008, the Department undertook a preliminary assessment in relation to a proposal to expand the Register to include all telephone and fax numbers. This established that the compliance costs and other impacts would be low. The Office of Best Practice Regulation agreed with the preliminary assessment that no Regulation Impact Statement would be required in relation to these changes and provided advice to that effect also in September 2008 (ID 9841). Therefore no Regulation Impact Statement has been prepared for the Amending Determination.

**Notes on the instrument**

**Section 1 – Name of Determination**

Section 1 provides that the name of the instrument is the *Do Not Call Register (Access to Register) Amendment Determination 2010 (No. 1)*.

**Section 2 – Commencement**

Section 2 sets out that the Amendment Determination commences on the day that Schedule 1 to the *Do Not Call Register Legislation Amendment Act 2010* commences.

**Section 3 – Amendment of *Do Not Call Register (Access to Register) Determination 2007***

Section 3 provides that Schedule 1 amends the Determination.

**Schedule 1 - Amendments**

[1] **Section 3**

Item 1 inserts a definition of the *information to be provided to the access-seeker*, which covers all information provided under subsection 19(2) of the Act. This ensures that the Determination applies to all valid requests made by access-seekers under subsection 19(2) of the Act.

[2] **Note to section 3**

Item 2 substitutes a Note in the Determination, inserting a reference to the definitions contained in section 4 of the Act, including *contracted service provider* and *Australian number*.

[3] **Subsection 4(1)**

Item 3 makes a consequential amendment to subsection 4(1) to replace the word “telephone” with “Australian”.
[4] **Note to subsection 4(1)**

Item 4 amends the Note to subsection 4(1) of the Determination by replacing the word “telephone” with “Australian”.

[5] **Subsection 4 (2)**

Item 5 amends subsection 4 (2) in the Determination, to replace the word “telephone” with “Australian”, and to refer to the fact that access-seekers may submit numbers to the ACMA or the contracted service provider for washing that are up to 10 digits in length, starting with a one or a zero.

[6] **Subsection 4(3)**

Item 6 makes a consequential amendment to subsection 4(3) to replace the word “telephone” with “Australian”.

[7] **Note 1 to subsection 4(7)**

Item 7 substitutes a Note in the Determination, to replace the word “telephone” with “Australian”, and to refer to the expansion of the Register to cover marketing faxes.

[8] **Note 2 to subsection 4(7)**

Item 8 substitutes a Note in the Determination, to replace the word “telephone” with “Australian”.

[9] **Section 5**

Item 9 substitutes section 5 in the existing Determination, so that it explains how the ACMA or the contracted service provider may provide to an access-seeker, under paragraphs 19 (2) (d), 19 (2) (e) and 19 (2) (f) of the Act, the information to be provided to the access-seeker.

[10] **Section 6**

Item 10 repeals section 6, as a consequence of the Amending Act and changes to section 5.

[11] **Subsection 7(1)**

Item 11 repeals subsection 7 (1), as a consequence of the Amending Act and changes to section 5.

[12] **Subsection 7(2)**

Item 12 inserts text to make it clear that the requirements in subsection 7 (2) only apply where the access-seeker has submitted their list of Australian numbers in accordance with section 4.
Paragraph 7(2)(c)

Item 13 makes a consequential amendment to paragraph 7 (2) (c) to replace the word “telephone” with “Australian”.

Note to subsection 7(2)

Item 14 substitutes a Note in the Determination, to replace the word “telephone” with “Australian”, and to refer to the fact that access-seekers may submit numbers to the ACMA or the contracted service provider for washing that are up to 10 digits in length, starting with a one or a zero.

Paragraph 7(3)(b)

Item 15 makes a consequential amendment to paragraph 7(3)(b) to replace the word “telephone” with “Australian”.

Paragraph 7(3)(c)

Item 16 makes a consequential amendment to paragraph 7 (3)(c) to replace the word “telephone” with “Australian”.

Paragraph 7(3)(d)

Item 17 makes a consequential amendment to paragraph 7(3)(d) to replace the word “telephone” with “Australian”.

Paragraph 7(3)(e)

Item 18 makes a consequential amendment to paragraph 7(3)(e) to replace the word “telephone” with “Australian”.

Paragraph 7(3)(g)

Item 19 substitutes paragraph 7 (3) (g) so that it refers to the amended section 5, and does not refer to the omitted section 6.