Explanatory Statement

Issued by the authority of the Australian Communications and Media Authority

DO NOT CALL REGISTER (ACCESS TO REGISTER) AMENDMENT DETERMINATION 2012 (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 2012 (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). The Act also provides, among other things, for persons who wish to seek access to the Register to submit lists of numbers for checking against the Register. Subsection 20(1) of the Act allows the ACMA to make a determination relating to the manner in which such lists can be submitted, the manner in which information will be given, the manner in which lists will be returned and any other matter relating to accessing the Register.

Section 19 of the Act requires the ACMA, or the contracted service provider, to check numbers submitted by access-seekers against the Register, provided that the access seeker has paid any applicable fee and has submitted numbers for checking in accordance with any determination made under subsection 20(1) of the Act.

The ACMA made the Do Not Call Register (Access to Register) Determination 2007 (the Determination) on 27 April 2007 (with minor amendments made on 28 May 2010 and 23 June 2010). The Determination sets out the manner in which submissions under section 19 of the Act may be made, as well as other matters relating to accessing the Register. In particular, subsection 4(3) of the Determination requires access-seekers to register with the ACMA in order to be eligible to submit numbers for checking against the Register.

The Amendment Determination makes changes of a minor nature, clarifying that registered access-seekers are required to comply with such terms and conditions, approved by the ACMA and specified on its, or the contracted service provider’s, website, as are in force from time to time. These terms and conditions are of an administrative nature and deal with issues such as account inactivity, suspension and deregistration of access-seeker accounts and communications between the ACMA and access-seekers.

In accordance with section 589 of the Telecommunications Act 1997, a legislative instrument made under the Act may incorporate a matter contained in any other instrument or writing as in force or existing from time to time.

Consultation

The amendments made by the Amendment Determination are changes of a minor and machinery nature and do not substantially alter the existing arrangements under the Determination. Accordingly, the ACMA considers that consultation is unnecessary in the circumstances.
**Regulatory impact**

The Office of Best Practice Regulation (OBPR) has determined that the proposed regulatory change in this submission is minor or machinery in nature and has therefore verified that no further regulatory impact analysis is required.

**Notes on the instrument**

**Section 1 – Name of Determination**

Section 1 provides that the Amendment Determination is the *Do Not Call Register (Access to Register) Amendment Determination 2012 (No. 1).*

**Section 2 – Commencement**

Section 2 sets out that the Amendment Determination commences on the day after it is registered.

**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] Subsection 4(3)
Item [1] effectively amends subsection 4(3). The new subsection 4(3) still requires access-seekers to register with the ACMA in order to submit numbers for checking against the Register, but this amendment clarifies that the registration procedure that access seekers must follow is one that is approved by the ACMA and published on the ACMA’s, or the contracted service provider’s, website. This amendment clarifies that the method must be approved by the ACMA.

[2] New subsections 4(3A), 4(3B), 4(3C) and 4(3D)
Item [2] inserts new subsections 4(3A), 4(3B), 4(3C) and 4(3D).

Subsection 4(3A)
New subsection 4(3A) states that access-seekers registered under subsection 4(3) must comply with the terms and conditions approved by the ACMA and published on the website of the ACMA or the contracted service provider (the Register website) as in force from time to time. These terms and conditions enable the ACMA to more effectively and consistently manage access-seeker accounts.

This amendment makes it clear that access seekers are required to comply with such administrative terms and conditions as the ACMA may specify from time to time. These terms and conditions deal with such matters as communications from the ACMA to access-seekers and processes for suspension or deregistration of accounts.

Subsection 4(3B)
The inclusion of new subsection 4(3B) is intended to clarify that the ACMA’s power to register access-seekers includes a power to deregister or suspend access-seeker’s registration where those access-seekers do not comply with the terms and conditions referred to in subsection 4(3A). This amendment enables the ACMA to more effectively and transparently manage all aspects of the registration procedure. The ACMA’s power to deregister access-seekers for contravention of the terms and conditions is limited by subsection 4(3C).

Subsection 4(3C)
New subsection 4(3C) limits the reasons for which an access-seeker can be deregistered to ensure that deregistration can occur only in relation to inactive accounts. In other circumstances where there is non-compliance with the terms and conditions, the ACMA may suspend an access-seeker’s registration but may not deregister the account.

Subsection 4(3D)
Subsection 4(3D) defines ‘inactive accounts’ for the purpose of subsection 4(3C) as having the meaning set out in the in the terms and conditions referred to in subsection (3A), as in force from time to time. The current terms and conditions provide that an account is inactive if:
- An access-seeker fails to keep its administration account details accurate and up-to-date; or
- An access-seeker does not activate a subscription for 12 months; or
- An access-seeker does not submit a list for washing for 12 months and one day.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Do Not Call Register (Access to Register) Amendment Determination 2012 (No. 1).

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Legislative Instrument

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). Section 19 of the Act provides that persons may seek access to the Register by submitting lists of numbers for checking against 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, sets 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 Amendment Determination makes changes of a minor nature that will provide that applicants will be required to comply with terms and conditions specified in respect of accessing the Register as in force from time to time.

Human rights implications

This Bill/Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Bill/Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Australian Communications and Media Authority