

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**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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1 **A Bill for an Act to amend the *Do Not Call Register***
2 ***Act 2006, and for other purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Do Not Call Register Legislation*
6 *Amendment Act 2009*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	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.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

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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:

1 ***business number*** means an Australian number other than a number
2 that is used, or maintained, exclusively or primarily for private or
3 domestic purposes.

4 **5 Section 4 (definition of *cause*)**

5 Repeal the definition, substitute:

6 ***cause:***

- 7 (a) when used in relation to the making of a telemarketing call—
8 has a meaning affected by subsection 11(9); or
9 (b) when used in relation to the sending of a marketing fax—has
10 a meaning affected by subsection 12B(10).

11 **6 Section 4 (after paragraph (d) of the definition of *civil***
12 ***penalty provision*)**

13 Insert:

- 14 (da) subsection 12B(1);
15 (db) subsection 12B(8);
16 (dc) subsection 12C(1);
17 (dd) subsection 12C(2);

18 **7 Section 4 (definition of *consent*)**

19 After “call”, insert “or the sending of a marketing fax”.

20 **8 Section 4 (definition of *dealing with*)**

21 Repeal the definition, substitute:

22 ***dealing with:***

- 23 (a) when used in relation to a telemarketing call—includes
24 retrieving the call from a voicemail system or similar system;
25 or
26 (b) when used in relation to a marketing fax—includes:
27 (i) printing the fax; and
28 (ii) retrieving the fax from a device or a computer system.

29 **9 Section 4**

30 Insert:

31 ***designated marketing fax*** has the meaning given by Schedule 1A.

1 **10 Section 4 (definition of *employee*)**

2 Repeal the definition, substitute:

3 *employee*:

4 (a) when used in clause 4 of Schedule 1—has a meaning affected
5 by clause 7 of Schedule 1; or

6 (b) when used in clause 4 of Schedule 1A—has a meaning
7 affected by clause 7 of Schedule 1A.

8 **11 Section 4 (definition of *employer*)**

9 Repeal the definition, substitute:

10 *employer*:

11 (a) when used in clause 4 of Schedule 1—has a meaning affected
12 by clause 7 of Schedule 1; or

13 (b) when used in clause 4 of Schedule 1A—has a meaning
14 affected by clause 7 of Schedule 1A.

15 **12 Section 4**

16 Insert:

17 *express consent* does not include registered consent.

18 **13 Section 4**

19 Insert:

20 *fax* has a meaning affected by section 5A.

21 **14 Section 4**

22 Insert:

23 *industry classification* has the meaning given by section 5C.

24 **15 Section 4**

25 Insert:

26 *marketing fax* has the meaning given by section 5B.

27 **16 Section 4**

28 Insert:

1 *registered consent* means consent entered on the Do Not Call
2 Register.

3 **17 Section 4**

4 Insert:

5 *relevant account-holder*, in relation to an Australian number,
6 means:

- 7 (a) if an individual or organisation is solely responsible for the
8 relevant account—the individual or organisation; or
9 (b) if 2 or more individuals and/or organisations are jointly
10 responsible for the relevant account—any of those
11 individuals or organisations.

12 **18 Section 4 (definition of *relevant telephone account-holder*)**

13 Repeal the definition.

14 **19 Section 4**

15 Insert:

16 *send* includes attempt to send.

17 **20 Subsection 5(1)**

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

19 **21 Paragraphs 5(1)(c) and (d)**

20 Omit “telephone” (wherever occurring).

21 **22 After section 5**

22 Insert:

23 **5A Faxes**

24 A reference in this Act to a *fax* is a reference to a fax, whether or
25 not:

- 26 (a) the fax is a facsimile of a physical document; or
27 (b) the fax was created by computer software; or
28 (c) the sending of the fax involves the use of:
29 (i) a fax machine; or
30 (ii) a fax server; or
-

- 1 (iii) a fax gateway; or
- 2 (iv) a mail-to-fax system; or
- 3 (v) equipment specified in the regulations; or
- 4 (vi) a system specified in the regulations.

5 **5B Marketing faxes**

6 *Basic definition*

- 7 (1) For the purposes of this Act, a **marketing fax** is a fax sent to an
- 8 Australian number, where, having regard to:
 - 9 (a) the content of the fax; and
 - 10 (b) the presentational aspects of the fax; and
 - 11 (c) the content that can be obtained using the numbers, URLs or
 - 12 contact information (if any) mentioned in the fax;it would be concluded that the purpose, or one of the purposes, of
- 13 the fax is:
 - 14 (d) to offer to supply goods or services; or
 - 15 (e) to advertise or promote goods or services; or
 - 16 (f) to advertise or promote a supplier, or prospective supplier, of
 - 17 goods or services; or
 - 18 (g) to offer to supply land or an interest in land; or
 - 19 (h) to advertise or promote land or an interest in land; or
 - 20 (i) to advertise or promote a supplier, or prospective supplier, of
 - 21 land or an interest in land; or
 - 22 (j) to offer to provide a business opportunity or investment
 - 23 opportunity; or
 - 24 (k) to advertise or promote a business opportunity or investment
 - 25 opportunity; or
 - 26 (l) to advertise or promote a provider, or prospective provider,
 - 27 of a business opportunity or investment opportunity; or
 - 28 (m) to solicit donations; or
 - 29 (n) a purpose specified in the regulations.
- 30
- 31 (2) For the purposes of paragraphs (1)(d) to (l), it is immaterial
- 32 whether the goods, services, land, interest or opportunity exists.
- 33 (3) For the purposes of paragraphs (1)(d) to (l), it is immaterial
- 34 whether it is lawful to acquire the goods, services, land or interest
- 35 or take up the opportunity.

- 1 (4) Either of the following:
2 (a) the supplier or prospective supplier mentioned in
3 paragraph (1)(f) or (i);
4 (b) the provider or prospective provider mentioned in
5 paragraph (1)(l);
6 may be the individual or organisation who sent the fax or
7 authorised the sending of the fax.
- 8 (5) Paragraphs (1)(d) to (n) are to be read independently of each other.
- 9 (6) Subsection (1) has effect subject to subsection (7).

10 *Excluded faxes—regulations*

- 11 (7) The regulations may provide that a specified kind of fax is not a
12 *marketing fax* for the purposes of this Act.

13 **5C Industry classification**

- 14 (1) The ACMA may, by legislative instrument, determine that an
15 activity ascertained in accordance with the determination is an
16 *industry classification* for the purposes of this Act.
- 17 Note: See also section 589 of the *Telecommunications Act 1997* (instruments
18 may provide for matters by reference to other instruments).
- 19 (2) The ACMA must ensure that a determination is in force under
20 subsection (1) at all times after the commencement of this section.

21 **23 Paragraphs 11(2)(a) and (b)**

22 Omit “telephone”.

23 **24 Paragraph 11(3)(b)**

- 24 Repeal the paragraph, substitute:
25 (b) during the 30-day period ending at the end of the day on
26 which the call was made:
27 (i) the person received information under paragraph
28 19(2)(d) in response to the submission of the list, but
29 that information did not state that the number was
30 registered on the Do Not Call Register; or
31 (ii) the person received information under paragraph
32 19(2)(e) in response to the submission of the list, but

- 1 that information did not state that the number was
2 registered on the Do Not Call Register; or
3 (iii) the person was informed under paragraph 19(2)(f), in
4 response to the submission of the list, that the number
5 was not registered on the Do Not Call Register; or
6 (iv) under paragraph 19(2)(g), in response to the submission
7 of the list, the person was given a list that included the
8 number.

9 **25 Subsection 11(3)**

10 Omit “telephone”, substitute “Australian”.

11 **26 After subsection 11(3)**

12 Insert:

13 (3A) Subsection (1) does not apply if:

- 14 (a) the number was included on a list that was submitted by the
15 person under subsection 19(1); and
16 (b) during the 30-day period ending at the end of the day on
17 which the call was made, the person received information
18 under paragraph 19(2)(d) in response to the submission of the
19 list, and that information stated:
20 (i) that the number was registered on the Do Not Call
21 Register; and
22 (ii) that a consent for that number was registered on the Do
23 Not Call Register in relation to telemarketing calls about
24 an activity covered by a particular industry
25 classification; and
26 (c) the call was about an activity covered by the industry
27 classification.

28 For the purposes of this subsection, a list may consist of a single
29 Australian number.

30 Note: Section 19 deals with access to the Do Not Call Register.

31 **27 Subsection 11(6)**

32 After “(3),”, insert “(3A),”.

33 **28 Paragraph 12(1)(b)**

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

1 **29 After Part 2**

2 Insert:

3 **Part 2A—Rules about sending marketing faxes**

4

5 **12A Simplified outline**

6 The following is a simplified outline of this Part:

- | | |
|----|--|
| 7 | • Unsolicited marketing faxes must not be sent to a number |
| 8 | registered on the Do Not Call Register. |
| 9 | • Agreements for the sending of marketing faxes must require |
| 10 | compliance with this Act. |

11 **12B Unsolicited marketing faxes must not be sent to a number**

12 **registered on the Do Not Call Register**

13 (1) A person must not send, or cause to be sent, a marketing fax to an

14 Australian number if:

- 15 (a) the number is registered on the Do Not Call Register; and
- 16 (b) the fax is not a designated marketing fax.

17 Note: For *designated marketing fax*, see Schedule 1A.

18 (2) Subsection (1) does not apply if:

- 19 (a) the relevant account-holder; or
- 20 (b) a nominee of the relevant account-holder;
- 21 consented to the sending of the fax.

22 Note 1: For the meaning of *consent*, see Schedule 2.

23 Note 2: For the meaning of *nominee*, see section 39.

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

- 25 (a) the number was included on a list that was submitted by the
- 26 person under subsection 19(1); and
- 27 (b) during the 30-day period ending at the end of the day on
- 28 which the fax was sent:
- 29 (i) the person received information under paragraph
- 30 19(2)(d) in response to the submission of the list, but

- 1 that information did not state that the number was
2 registered on the Do Not Call Register; or
3 (ii) the person received information under paragraph
4 19(2)(e) in response to the submission of the list, but
5 that information did not state that the number was
6 registered on the Do Not Call Register; or
7 (iii) the person was informed under paragraph 19(2)(f), in
8 response to the submission of the list, that the number
9 was not registered on the Do Not Call Register; or
10 (iv) under paragraph 19(2)(g), in response to the submission
11 of the list, the person was given a list that included the
12 number.

13 For the purposes of this subsection, a list may consist of a single
14 Australian number.

15 Note: Section 19 deals with access to the Do Not Call Register.

16 (4) Subsection (1) does not apply if:

- 17 (a) the number was included on a list that was submitted by the
18 person under subsection 19(1); and
19 (b) during the 30-day period ending at the end of the day on
20 which the fax was sent, the person received information
21 under paragraph 19(2)(d) in response to the submission of the
22 list, and that information stated:
23 (i) that the number was registered on the Do Not Call
24 Register; and
25 (ii) that a consent for that number was registered on the Do
26 Not Call Register in relation to marketing faxes about
27 an activity covered by a particular industry
28 classification; and
29 (c) the fax was about an activity covered by the industry
30 classification.

31 For the purposes of this subsection, a list may consist of a single
32 Australian number.

33 Note: Section 19 deals with access to the Do Not Call Register.

34 (5) Subsection (1) does not apply if the person sent the fax, or caused
35 the fax to be sent, by mistake.

36 (6) Subsection (1) does not apply if the person took reasonable
37 precautions, and exercised due diligence, to avoid the
38 contravention.

Schedule 1 Amendments

Part 1 Amendment of the Do Not Call Register Act 2006

- 1 (7) A person who wishes to rely on subsection (2), (3), (4), (5) or (6)
2 bears an evidential burden in relation to that matter.

3 *Ancillary contraventions*

- 4 (8) A person must not:
5 (a) aid, abet, counsel or procure a contravention of
6 subsection (1); or
7 (b) induce, whether by threats or promises or otherwise, a
8 contravention of subsection (1); or
9 (c) be in any way, directly or indirectly, knowingly concerned in,
10 or party to, a contravention of subsection (1); or
11 (d) conspire with others to effect a contravention of
12 subsection (1).

13 *Civil penalty provisions*

- 14 (9) Subsections (1) and (8) are *civil penalty provisions*.

15 Note: Part 4 provides for pecuniary penalties for breaches of civil penalty
16 provisions.

17 *Extended meaning of cause*

- 18 (10) For the purposes of this section, if:
19 (a) a person (the *first person*) enters into a contract or
20 arrangement, or arrives at an understanding, with another
21 person; and
22 (b) under the contract, arrangement or understanding, the other
23 person undertakes to send, or to cause any or all of the
24 employees or agents of the other person to send, marketing
25 faxes; and
26 (c) the other person, or an employee or agent of the other person,
27 gives effect to the contract, arrangement or understanding by
28 sending a marketing fax;
29 the first person is taken to have *caused* the marketing fax to be
30 sent.
31 (11) Paragraph (10)(a) applies to contracts or arrangements entered into,
32 or understandings arrived at, before, at or after the commencement
33 of this section.

1 **12C Agreements for the sending of marketing faxes must require**
2 **compliance with this Act**

- 3 (1) A person (the *first person*) must not enter into a contract or
4 arrangement, or arrive at an understanding, with another person, if:
5 (a) under the contract, arrangement or understanding, the other
6 person undertakes to:
7 (i) send marketing faxes; or
8 (ii) cause any or all of the employees or agents of the other
9 person to send marketing faxes; and
10 (b) there is a reasonable likelihood that some or all of those faxes
11 will be sent to Australian numbers; and
12 (c) the contract, arrangement or understanding does not contain
13 an express provision to the effect that the other person will:
14 (i) in any case—comply with this Act; and
15 (ii) if subparagraph (a)(ii) applies—take all reasonable steps
16 to ensure that the employees and agents of the other
17 person comply with this Act;
18 in relation to the sending of marketing faxes covered by the
19 contract, arrangement or understanding.

20 *Ancillary contraventions*

- 21 (2) A person must not:
22 (a) aid, abet, counsel or procure a contravention of
23 subsection (1); or
24 (b) induce, whether by threats or promises or otherwise, a
25 contravention of subsection (1); or
26 (c) be in any way, directly or indirectly, knowingly concerned in,
27 or party to, a contravention of subsection (1); or
28 (d) conspire with others to effect a contravention of
29 subsection (1).

30 *Civil penalty provisions*

- 31 (3) Subsections (1) and (2) are *civil penalty provisions*.

32 Note: Part 4 provides for pecuniary penalties for breaches of civil penalty
33 provisions.

1 *Validity of contracts, arrangements or understandings*

2 (4) A failure to comply with subsection (1) does not affect the validity
3 of any contract, arrangement or understanding.

4 **30 Subsection 13(1)**

5 Omit “telephone”, substitute “Australian”.

6 **31 Subsection 13(1)**

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

8 **32 Subsection 13(6)**

9 Repeal the subsection, substitute:

10 (6) For the purposes of the *Privacy Act 1988*, the primary purpose of
11 the Do Not Call Register is to facilitate:

12 (a) the prohibition, under section 11, of unsolicited telemarketing
13 calls (other than designated telemarketing calls); and

14 (b) the prohibition, under section 12B, of unsolicited marketing
15 faxes (other than designated marketing faxes).

16 **33 Section 14**

17 Repeal the section.

18 **34 Section 15**

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

20 **35 Section 15**

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

22 **36 Subparagraphs 15(a)(i) and (ii)**

23 Omit “telephone”.

24 **37 After paragraph 15(b)**

25 Insert:

26 (ba) may state that the applicant:

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

- 1 (ii) wishes to have that consent entered on the Do Not Call
2 Register; and
3 (bb) may state that the applicant:
4 (i) consents to the sending of marketing faxes to the
5 number if such a fax is about an activity covered by a
6 specified industry classification; and
7 (ii) wishes to have that consent entered on the Do Not Call
8 Register; and

9 **38 At the end of section 15**

10 Add:

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

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

- 15 (a) with one or more consents; or
16 (b) without any consents.

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

- 19 (a) with a replacement set of consents; or
20 (b) without any consents.

21 Note 3: See also paragraph 16(f).

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

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

26 **39 Section 16**

27 Repeal the section, substitute:

28 **16 Registration**

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

- 31 (a) if the Do Not Call Register is kept by the ACMA—the
32 ACMA; or

- 1 (b) if the Do Not Call Register is kept by the contracted service
2 provider—the contracted service provider on behalf of the
3 ACMA;
4 must:
- 5 (c) enter the number on the Do Not Call Register; and
6 (d) if the application stated that the applicant:
7 (i) consents to the making of telemarketing calls to the
8 number if such a call is about an activity covered by a
9 specified industry classification; and
10 (ii) wishes to have that consent entered on the Do Not Call
11 Register;
12 enter that consent on the Do Not Call Register; and
13 (e) if the application stated that the applicant:
14 (i) consents to the sending of marketing faxes to the
15 number if such a fax is about an activity covered by a
16 specified industry classification; and
17 (ii) wishes to have that consent entered on the Do Not Call
18 Register;
19 enter that consent on the Do Not Call Register; and
20 (f) if the application was made when the number was already
21 entered on the Do Not Call Register—immediately before
22 taking action under paragraph (c), (d) or (e), remove from the
23 Do Not Call Register:
24 (i) the previous entry of the number; and
25 (ii) any previous entries of consents for the number.

26 **40 Subsection 17(1)**

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

28 **41 Subsection 17(1)**

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

30 **42 Paragraph 17(1)(b)**

31 Repeal the paragraph, substitute:

- 32 (b) remains in force for 3 years, unless sooner removed from the
33 Do Not Call Register:
34 (i) under paragraph 16(f); or

1 (ii) in accordance with a determination under subsection
2 18(1).

3 **43 Subsection 17(2)**

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

5 **44 Subsection 17(2)**

6 After “number” (first occurring), insert “or a consent”.

7 **45 Subsection 17(2)**

8 After “the number”, insert “or consent”.

9 **46 Subsection 17(3)**

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

11 **47 Subsection 17(3)**

12 After “number” (first occurring), insert “or a consent”.

13 **48 Subsection 17(3)**

14 After “the number”, insert “or consent”.

15 **49 Paragraph 18(1)(a)**

16 Omit “telephone”, substitute “Australian”.

17 **50 Subsection 19(1)**

18 Omit “telephone” (wherever occurring), substitute “Australian”.

19 **51 Paragraph 19(2)(c)**

20 Omit “telephone” (wherever occurring), substitute “Australian”.

21 **52 Paragraph 19(2)(d)**

22 Repeal the paragraph, substitute:

23 (d) if the access-seeker requests the ACMA or the contracted
24 service provider, as the case may be, to do so—inform the
25 access-seeker:

26 (i) which numbers (if any) on the access-seeker’s list are
27 registered on the Do Not Call Register; and

- 1 (ii) if any consents for numbers on the access-seeker’s list
2 are registered on the Do Not Call Register—of those
3 consents; and
- 4 (e) if the access-seeker requests the ACMA or the contracted
5 service provider, as the case may be, to do so—inform the
6 access-seeker which numbers (if any) on the access-seeker’s
7 list are registered on the Do Not Call Register; and
- 8 (f) if the access-seeker requests the ACMA or the contracted
9 service provider, as the case may be, to do so—inform the
10 access-seeker which numbers (if any) on the access-seeker’s
11 list are not registered on the Do Not Call Register; and
- 12 (g) if the access-seeker requests the ACMA or the contracted
13 service provider, as the case may be, to do so—return the
14 access-seeker’s list, modified by the deletion of the numbers
15 (if any) registered on the Do Not Call Register.

16 **53 Subsection 19(3)**

17 Repeal the subsection.

18 **54 Paragraph 20(1)(b)**

19 Omit “19(2)(d)”, substitute “19(2)(d), (e) or (f)”.

20 **55 Paragraph 20(1)(c)**

21 Omit “subsection 19(3)”, substitute “paragraph 19(2)(g)”.

22 **56 Paragraph 21(1)(a)**

23 Omit “or (3)”.

24 **57 Subsections 21(2), (3) and (7)**

25 Omit “or (3)”.

26 **58 Subsections 25(1), (3), (4), (5) and (6)**

27 After “11(1) or (7)” (wherever occurring), insert “or 12B(1) or (8)”.

28 **59 After subsection 30(2)**

29 Insert:

- 30 (2A) In determining whether a person (the *victim*) has suffered loss or
31 damage as a result of one or more contraventions by another
32 person of section 12B in relation to the sending of one or more

1 marketing faxes, and in assessing the amount of compensation
2 payable, the court may have regard to the following:

- 3 (a) the extent to which any expenses incurred by the victim are
4 attributable to dealing with the faxes;
5 (b) the effect of dealing with the faxes on the victim's ability to
6 carry on business or other activities;
7 (c) any damage to the reputation of the victim's business that is
8 attributable to dealing with the faxes;
9 (d) any loss of business opportunities suffered by the victim as a
10 result of dealing with the faxes;
11 (e) any other matters that the court considers relevant.

12 **60 Subsection 39(1)**

13 Omit "a telephone", substitute "an Australian".

14 Note: The heading to subsection 39(1) is altered by omitting "telephone".

15 **61 Subsection 39(1)**

16 Omit "relevant telephone" (wherever occurring), substitute "relevant".

17 **62 Subsection 39(3)**

18 Omit "telephone", substitute "Australian".

19 **63 Subsection 39(4)**

20 Omit "a telephone", substitute "an Australian".

21 **64 Subsection 39(4)**

22 Omit "relevant telephone", substitute "relevant".

23 **65 At the end of section 39**

24 Add:

25 *Principles of agency not limited*

- 26 (5) References in this Act to a nominee do not, by implication, limit
27 the application of the principles of agency to a matter arising under
28 this Act.

29 **66 Paragraphs 41(a), (b) and (c)**

1 After “unsolicited telemarketing calls”, insert “and unsolicited
2 marketing faxes”.

3 **67 At the end of subsection 44(1)**

4 Add “or marketing faxes”.

5 **68 Paragraph 4(1)(b) of Schedule 1**

6 Omit “telephone”.

7 Note: The heading to subclause 4(1) of Schedule 1 is altered by omitting “*telephone*”.

8 **69 Subparagraph 4(1)(c)(i) of Schedule 1**

9 Omit “telephone”.

10 **70 Paragraph 4(2)(b) of Schedule 1**

11 Omit “telephone”.

12 Note: The heading to subclause 4(2) of Schedule 1 is altered by omitting “*telephone*”.

13 **71 After Schedule 1**

14 Insert:

15 **Schedule 1A—Designated marketing faxes**

16 Note: See section 4.

17
18

19 **1 Object**

20 The object of this Schedule is to define the expression *designated*
21 *marketing fax*.

22 Note: Designated marketing faxes are exempt from section 12B (unsolicited
23 marketing faxes must not be sent to a number registered on the Do Not
24 Call Register).

25 **2 Government bodies, religious organisations and charities**

26 For the purposes of this Act, a marketing fax is a *designated*
27 *marketing fax* if:

28 (a) the sending of the fax is authorised by any of the following
29 bodies:

- 1 (i) a government body;
2 (ii) a religious organisation;
3 (iii) a charity or charitable institution; and
4 (b) if the fax relates to goods or services—the body is the
5 supplier, or prospective supplier, of the goods or services;
6 and
7 (c) the fax is not of a kind specified in the regulations.

8 **3 Political parties, independent members of parliament, candidates**
9 **etc.**

10 *Political parties*

- 11 (1) For the purposes of this Act, a marketing fax is a ***designated***
12 ***marketing fax*** if:
13 (a) the sending of the fax is authorised by a registered political
14 party; and
15 (b) having regard to:
16 (i) the content of the fax; and
17 (ii) the presentational aspects of the fax;
18 it would be concluded that the purpose, or one of the
19 purposes, of the fax is:
20 (iii) to conduct fund-raising for electoral purposes; or
21 (iv) to conduct fund-raising for political purposes; and
22 (c) if the fax relates to goods or services—the registered political
23 party is the supplier, or prospective supplier, of the goods or
24 services; and
25 (d) the fax is not of a kind specified in the regulations.

26 *Independent members of parliament etc.*

- 27 (2) For the purposes of this Act, a marketing fax is a ***designated***
28 ***marketing fax*** if:
29 (a) the sending of the fax is authorised by a person who is a
30 member of:
31 (i) the Parliament of the Commonwealth; or
32 (ii) the parliament of a State; or
33 (iii) the Legislative Assembly for the Australian Capital
34 Territory; or

- 1 (iv) the Legislative Assembly of the Northern Territory; or
2 (v) the Legislative Assembly of Norfolk Island; or
3 (vi) a local governing body established by or under a law of
4 a State or a Territory;
5 and who is not affiliated with any registered political party;
6 and
7 (b) having regard to:
8 (i) the content of the fax; and
9 (ii) the presentational aspects of the fax;
10 it would be concluded that the purpose, or one of the
11 purposes, of the fax is:
12 (iii) to conduct fund-raising for electoral purposes; or
13 (iv) to conduct fund-raising for political purposes; and
14 (c) if the fax relates to goods or services—the person is the
15 supplier, or prospective supplier, of the goods or services;
16 and
17 (d) the fax is not of a kind specified in the regulations.

18 *Candidates*

- 19 (3) For the purposes of this Act, a marketing fax is a *designated*
20 *marketing fax* if:
21 (a) the sending of the fax is authorised by a person who is a
22 candidate in an election for:
23 (i) the House of Representatives; or
24 (ii) the Senate; or
25 (iii) a house of the parliament of a State; or
26 (iv) the Legislative Assembly for the Australian Capital
27 Territory; or
28 (v) the Legislative Assembly of the Northern Territory; or
29 (vi) the Legislative Assembly of Norfolk Island; or
30 (vii) a local governing body established by or under a law of
31 a State or a Territory; and
32 (b) having regard to:
33 (i) the content of the fax; and
34 (ii) the presentational aspects of the fax;
35 it would be concluded that the purpose, or one of the
36 purposes, of the fax is:
-

- 1 (iii) to conduct fund-raising for electoral purposes; or
2 (iv) to conduct fund-raising for political purposes; and
3 (c) if the fax relates to goods or services—the person is the
4 supplier, or prospective supplier, of the goods or services;
5 and
6 (d) the fax is not of a kind specified in the regulations.

7 **4 Educational institutions**

8 *Relevant account-holder is a householder*

- 9 (1) For the purposes of this Act, a marketing fax is a **designated**
10 **marketing fax** if:
11 (a) the sending of the fax is authorised by an educational
12 institution; and
13 (b) the fax is sent to a number that is used or maintained
14 primarily for the private or domestic purposes of the relevant
15 account-holder and/or members of the relevant
16 account-holder's household; and
17 (c) either or both of the following subparagraphs apply:
18 (i) the relevant account-holder is, or has been, enrolled as a
19 student in that institution;
20 (ii) a member or former member of the relevant
21 account-holder's household is, or has been, enrolled as a
22 student in that institution; and
23 (d) if the fax relates to goods or services—the institution is the
24 supplier, or prospective supplier, of the goods or services;
25 and
26 (e) the fax is not of a kind specified in the regulations.

27 *Relevant account-holder is an employer*

- 28 (2) For the purposes of this Act, a marketing fax is a **designated**
29 **marketing fax** if:
30 (a) the sending of the fax is authorised by an educational
31 institution; and
32 (b) the relevant account-holder is the employer of an employee;
33 and

- 1 (c) the fax is sent to a number that is used or maintained
2 primarily for the private or domestic purposes of the
3 employee and/or members of the employee's household; and
4 (d) either or both of the following subparagraphs apply:
5 (i) the employee is, or has been, enrolled as a student in
6 that institution;
7 (ii) a member or former member of the employee's
8 household is, or has been, enrolled as a student in that
9 institution; and
10 (e) if the fax relates to goods or services—the institution is the
11 supplier, or prospective supplier, of the goods or services;
12 and
13 (f) the fax is not of a kind specified in the regulations.

14 Note: Clause 7 provides for an extended meaning of *employee* and
15 *employer*.

16 5 Regulations

17 The regulations may provide that a specified kind of marketing fax
18 is a *designated marketing fax* for the purposes of this Act.

19 6 Authorising the sending of marketing faxes

20 *Attribution of authorisation to organisation*

- 21 (1) For the purposes of this Schedule (including subclause (2)), if:
22 (a) an individual authorises the sending of a marketing fax; and
23 (b) the individual does so on behalf of an organisation;
24 then:
25 (c) the organisation is taken to authorise the sending of the fax;
26 and
27 (d) the individual is taken not to authorise the sending of the fax.

28 *Self-authorisation*

- 29 (2) For the purposes of this Schedule, if:
30 (a) a marketing fax is sent by an individual or organisation; and
31 (b) the sending of the fax is not authorised by any other
32 individual or organisation;

1 the first-mentioned individual or organisation is taken to authorise
2 the sending of the fax.

3 **7 Extended meaning of *employee* and *employer***

4 *Member of the executive body of a body corporate*

5 (1) For the purposes of clause 4, if an individual is a member of the
6 executive body (whether described as the board of directors or
7 otherwise) of a body corporate, the individual is taken to be an
8 employee of the body corporate.

9 *Contractor*

10 (2) For the purposes of clause 4, if an individual works under a
11 contract that is wholly or principally for the labour of the
12 individual, the individual is taken to be an employee of the other
13 party to the contract.

14 *Member of parliament*

15 (3) For the purposes of clause 4, if an individual is a member of the
16 Parliament of the Commonwealth, the individual is taken to be an
17 employee of the Commonwealth.

18 (4) For the purposes of clause 4, if an individual is a member of the
19 parliament of a State, the individual is taken to be an employee of
20 the State.

21 (5) For the purposes of clause 4, if an individual is a member of the
22 Legislative Assembly for the Australian Capital Territory, the
23 individual is taken to be an employee of the Australian Capital
24 Territory.

25 (6) For the purposes of clause 4, if an individual is a member of the
26 Legislative Assembly of the Northern Territory, the individual is
27 taken to be an employee of the Northern Territory.

28 (7) For the purposes of clause 4, if an individual is a member of the
29 Legislative Assembly of Norfolk Island, the individual is taken to
30 be an employee of Norfolk Island.

1 *Member of local governing body*

2 (8) For the purposes of clause 4, if an individual is a member of a local
3 governing body established by or under a law of a State or
4 Territory, the individual is taken to be an employee of that body.

5 *Officeholder etc.*

6 (9) For the purposes of clause 4, if an individual:

7 (a) holds, or performs the duties of, an appointment, office or
8 position under the Constitution or under a law of the
9 Commonwealth, of a State or of a Territory; or

10 (b) is otherwise in the service of the Commonwealth, of a State
11 or of a Territory (including service as a member of the
12 Defence Force or as a member of a police force);

13 the individual is taken to be an employee of the Commonwealth,
14 the State or the Territory, as the case requires.

15 **72 At the end of clause 1 of Schedule 2 (before the note)**

16 Add “or the sending of a marketing fax”.

17 **73 Clause 1 of Schedule 2 (at the end of the note)**

18 Add “and section 12B (unsolicited marketing faxes must not be sent to a
19 number registered on the Do Not Call Register)”.

20 **74 After paragraph 2(a) of Schedule 2**

21 Insert:

22 (aa) registered consent; or

23 **75 At the end of clause 2 of Schedule 2**

24 Add:

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

27 **76 After clause 3 of Schedule 2**

28 Insert:

29 **3A Duration of registered consent**

30 (1) A registered consent cannot be withdrawn.

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

5 **77 Clause 4 of Schedule 2**

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

7 Note: The heading to clause 4 of Schedule 2 is altered by omitting “a **telephone**” and
8 substituting “**an Australian**”.

9 **78 Paragraphs 4(a) and (b) of Schedule 2**

10 Omit “telephone”.

11 **79 Clause 4 of Schedule 2**

12 Omit “the telephone number”, substitute “the number”.

13 **80 Subclause 5(1) of Schedule 2**

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

15 **81 Paragraphs 5(1)(a) and (b) of Schedule 2**

16 Omit “telephone”.

17 **82 Subclause 5(2) of Schedule 2**

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

19 **83 Paragraphs 5(2)(a) and (b) of Schedule 2**

20 Omit “telephone”.

21 **84 At the end of Schedule 2**

22 Add:

23 **6 Determinations about consent—telemarketing calls made to**
24 **business numbers**

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

- 1 (2) The ACMA may, by legislative instrument, determine that, for the
2 purposes of the application of this Act to a telemarketing call made
3 to a business number, the consent of the relevant account-holder
4 may be inferred in the circumstances specified in the
5 determination.
- 6 (3) Before making a determination under subclause (1) or (2), the
7 ACMA must consult the Minister.
- 8 (4) Before making a determination under subclause (1) or (2), the
9 ACMA must:
- 10 (a) publish on its website a notice:
- 11 (i) setting out a draft of the determination; and
- 12 (ii) inviting persons to make submissions to the ACMA
13 about the draft determination within 14 days after the
14 notice is published; and
- 15 (b) consider any submissions received within the 14-day period.
- 16 (5) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a
17 power conferred on the ACMA by subclause (1) or (2). However,
18 if a variation of a determination under subclause (1) or (2) is a
19 variation of a minor nature, the ACMA is not required to comply
20 with subclause (3) or (4) in relation to the variation.
- 21 (6) If a determination under subclause (1) or (2) of this clause is
22 inconsistent with regulations made for the purposes of clause 5, the
23 determination has no effect to the extent of the inconsistency.

24 **7 Determinations about consent—marketing faxes sent to business**
25 **numbers**

- 26 (1) The ACMA may, by legislative instrument, determine that, for the
27 purposes of the application of this Act to a marketing fax sent to a
28 business number, the consent of the relevant account-holder may
29 not be inferred in the circumstances specified in the determination.
- 30 (2) The ACMA may, by legislative instrument, determine that, for the
31 purposes of the application of this Act to a marketing fax sent to a
32 business number, the consent of the relevant account-holder may
33 be inferred in the circumstances specified in the determination.
- 34 (3) Before making a determination under subclause (1) or (2), the
35 ACMA must consult the Minister.
-

- 1 (4) Before making a determination under subclause (1) or (2), the
2 ACMA must:
- 3 (a) publish on its website a notice:
- 4 (i) setting out a draft of the determination; and
- 5 (ii) inviting persons to make submissions to the ACMA
6 about the draft determination within 14 days after the
7 notice is published; and
- 8 (b) consider any submissions received within the 14-day period.
- 9 (5) Subsection 33(3) of the *Acts Interpretation Act 1901* applies to a
10 power conferred on the ACMA by subclause (1) or (2). However,
11 if a variation of a determination under subclause (1) or (2) is a
12 variation of a minor nature, the ACMA is not required to comply
13 with subclause (3) or (4) in relation to the variation.
- 14 (6) If a determination under subclause (1) or (2) of this clause is
15 inconsistent with regulations made for the purposes of clause 5, the
16 determination has no effect to the extent of the inconsistency.

17 **85 After subclause 2(2) of Schedule 3**

18 Insert:

- 19 (2A) Subclause (2) does not apply to a contravention of subsection 12(1)
20 or (2) or 12C(1) or (2).

21 Note 1: Section 12 deals with agreements for the making of telemarketing
22 calls.

23 Note 2: Section 12C deals with agreements for the sending of marketing faxes.

24 **86 Subclause 4(1) of Schedule 3 (table items 1, 2, 3, 4, 5 and**
25 **6)**

26 After “11(1) or (7)”, insert “or 12B(1) or (8)”.

27 **87 Subclause 4(2) of Schedule 3 (table items 1, 2, 3, 4, 5 and**
28 **6)**

29 After “11(1) or (7)”, insert “or 12B(1) or (8)”.

30 **Division 2—Application**

31 **88 Application—agreements for the making of telemarketing**
32 **calls**

1 The amendment of paragraph 12(1)(b) of the *Do Not Call Register Act*
2 *2006* made by this Part applies in relation to:

- 3 (a) a contract or arrangement entered into; or
4 (b) an understanding arrived at;
5 after the commencement of this item.

6 **89 Application—continuity of the Do Not Call Register**

7 The amendments of section 13 of the *Do Not Call Register Act 2006*
8 made by this Part do not affect the continuity of the Do Not Call
9 Register.

10 **90 Application—registration of an Australian number**

11 If:

- 12 (a) an application for an Australian number to be entered on the
13 Do Not Call Register was made before the commencement of
14 this item under section 15 of the *Do Not Call Register Act*
15 *2006*; and
16 (b) the application was pending immediately before that
17 commencement;

18 the application has effect as if it were an application made after that
19 commencement under section 15 of the *Do Not Call Register Act 2006*
20 as amended by this Part.

21 **91 Application—access to the Do Not Call Register**

22 Despite the following amendments made, and repeals effected, by this
23 Part:

- 24 (a) the repeal of paragraph 11(3)(b) of the *Do Not Call Register*
25 *Act 2006*;
26 (b) the repeal of paragraph 19(2)(d) of the *Do Not Call Register*
27 *Act 2006*;
28 (c) the repeal of subsection 19(3) of the *Do Not Call Register Act*
29 *2006*;
30 (d) the amendment of paragraph 20(1)(c) of the *Do Not Call*
31 *Register Act 2006*;
32 (e) the amendment of paragraph 20(1)(d) of the *Do Not Call*
33 *Register Act 2006*;
34 (f) the amendments of section 21 of the *Do Not Call Register*
35 *Act 2006*;

1 those paragraphs, that subsection and that section continue to apply, in
2 relation to a list submitted under subsection 19(1) of the *Do Not Call*
3 *Register Act 2006* before the commencement of this item, as if those
4 amendments had not been made and those repeals had not been
5 effected.

6 **92 Application—continuity of a nomination**

7 The amendments of subsections 39(1) and (3) of the *Do Not Call*
8 *Register Act 2006* made by this Part do not affect the continuity of a
9 nomination in force under that section immediately before the
10 commencement of this item.

11 **93 Application—principles of agency**

12 Subsection 39(5) of the *Do Not Call Register Act 2006* as amended by
13 this Part applies to a matter arising under that Act before, at or after the
14 commencement of this item.

15 **94 Application—infringement notices**

16 Subclause 2(2A) of Schedule 3 of the *Do Not Call Register Act 2006* as
17 amended by this Part applies in relation to an alleged contravention that
18 occurs after the commencement of this item.

1

2 **Part 2—Other amendments**

3 *Telecommunications Act 1997*

4 **95 At the end of subsection 3(2)**

5 Add:

6 ; (l) to promote responsible practices in relation to the sending of
7 marketing faxes.

8 **96 Section 5**

9 Omit “or the telemarketing industry” (wherever occurring), substitute “,
10 the telemarketing industry or the fax marketing industry”.

11 **97 Section 7**

12 Insert:

13 *fax marketing industry* means an industry that involves carrying
14 on a fax marketing activity (as defined by section 109C).

15 **98 Section 7**

16 Insert:

17 *marketing fax* means:

- 18 (a) a marketing fax (within the meaning of the *Do Not Call*
19 *Register Act 2006*) that is sent to an Australian number; or
20 (b) a fax (within the meaning of the *Do Not Call Register Act*
21 *2006*) that is sent to an Australian number, where, having
22 regard to:
23 (i) the content of the fax; and
24 (ii) the presentational aspects of the fax;
25 it would be concluded that the purpose, or one of the
26 purposes, of the fax is:
27 (iii) to conduct opinion polling; or
28 (iv) to carry out standard questionnaire-based research.

29 **99 Section 106**

1 Omit “or the telemarketing industry” (wherever occurring), substitute “,
2 the telemarketing industry or the fax marketing industry”.

3 **100 After section 109B**

4 Insert:

5 **109C Fax marketing activity**

6 (1) For the purposes of this Part, a *fax marketing activity* is an activity
7 to which subsection (2), (3) or (4) applies.

8 (2) This subsection applies to an activity that:

- 9 (a) is carried on by a person (the *first person*) under a contract or
10 arrangement (other than a contract of employment); and
11 (b) consists of:
- 12 (i) using marketing faxes to market, advertise or promote
13 goods or services, where the first person is not the
14 supplier or prospective supplier of the goods or services;
15 or
 - 16 (ii) using marketing faxes to advertise or promote a supplier
17 or prospective supplier of goods or services, where the
18 first person is not the supplier or prospective supplier of
19 the goods or services; or
 - 20 (iii) using marketing faxes to market, advertise or promote
21 land or interests in land, where the first person is not the
22 supplier or prospective supplier of the land or interests
23 in land; or
 - 24 (iv) using marketing faxes to advertise or promote a supplier
25 or prospective supplier of land or interests in land,
26 where the first person is not the supplier or prospective
27 supplier of the land or interests in land; or
 - 28 (v) using marketing faxes to market, advertise or promote
29 business opportunities or investment opportunities,
30 where the first person is not the provider or prospective
31 provider of the business opportunities or investment
32 opportunities; or
 - 33 (vi) using marketing faxes to advertise or promote a
34 provider, or prospective provider, of business
35 opportunities or investment opportunities, where the
36 first person is not the provider or prospective provider

1 of the business opportunities or investment
2 opportunities.

3 (3) This subsection applies to an activity carried on by a person if the
4 activity consists of:

5 (a) using marketing faxes to market, advertise or promote goods
6 or services, where the person is the supplier or prospective
7 supplier of the goods or services; or

8 (b) using marketing faxes to advertise or promote a supplier or
9 prospective supplier of goods or services, where the person is
10 the supplier or prospective supplier of the goods or services;
11 or

12 (c) using marketing faxes to market, advertise or promote land or
13 interests in land, where the person is the supplier or
14 prospective supplier of the land or interests in land; or

15 (d) using marketing faxes to advertise or promote a supplier or
16 prospective supplier of land or interests in land, where the
17 person is the supplier or prospective supplier of the land or
18 interests in land; or

19 (e) using marketing faxes to market, advertise or promote
20 business opportunities or investment opportunities, where the
21 person is the provider or prospective provider of the business
22 opportunities or investment opportunities; or

23 (f) using marketing faxes to advertise or promote a provider, or
24 prospective provider, of business opportunities or investment
25 opportunities, where the person is the provider or prospective
26 provider of the business opportunities or investment
27 opportunities.

28 (4) This subsection applies to an activity carried on by a person if the
29 activity consists of:

30 (a) using marketing faxes to solicit donations; or

31 (b) using marketing faxes to conduct opinion polling; or

32 (c) using marketing faxes to carry out standard
33 questionnaire-based research.

34 (5) An expression (other than *marketing fax*) used in this section and
35 in section 5B of the *Do Not Call Register Act 2006* has the same
36 meaning in this section as it has in that section.

37 **101 After section 110B**

1 Insert:

2 **110C Sections of the fax marketing industry**

- 3 (1) For the purposes of this Part, *sections of the fax marketing*
4 *industry* are to be ascertained in accordance with this section.
- 5 (2) If no determination is in force under subsection (3), all of the
6 persons carrying on, or proposing to carry on, fax marketing
7 activities constitute a single section of the fax marketing industry
8 for the purposes of this Part.
- 9 (3) The ACMA may, by legislative instrument, determine that persons
10 carrying on, or proposing to carry on, one or more specified kinds
11 of fax marketing activity constitute a section of the fax marketing
12 industry for the purposes of this Part.
- 13 (4) The section must be identified in the determination by a unique
14 name and/or number.
- 15 (5) A determination under subsection (3) has effect accordingly.
- 16 (6) Sections of the fax marketing industry determined under
17 subsection (3):
- 18 (a) need not be mutually exclusive; and
19 (b) may consist of the aggregate of any 2 or more sections of the
20 fax marketing industry mentioned in subsection (2) or
21 determined under subsection (3); and
22 (c) may be subsets of a section of the fax marketing industry
23 mentioned in subsection (2) or determined under
24 subsection (3).
- 25 (7) Subsection (6) does not, by implication, limit subsection (3).

26 **102 After section 111AA**

27 Insert:

1 **111AB Participants in a section of the fax marketing industry**

2 For the purposes of this Part, if a person is a member of a group
3 that constitutes a section of the fax marketing industry, the person
4 is a *participant* in that section of the fax marketing industry.

5 **103 After subsection 112(1B)**

6 Insert:

7 (1C) The Parliament intends that bodies or associations that the ACMA
8 is satisfied represent sections of the fax marketing industry should
9 develop codes (*industry codes*) that are to apply to participants in
10 the respective sections of the industry in relation to the fax
11 marketing activities of the participants.

12 **104 Subsection 112(2)**

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

14 **105 Subsection 112(2)**

15 Omit “or the telemarketing industry”, substitute “, the telemarketing
16 industry or the fax marketing industry”.

17 **106 After subsection 112(3C)**

18 Insert:

19 (3D) In determining whether public interest considerations are being
20 addressed in a way that does not impose undue financial and
21 administrative burdens on participants in sections of the fax
22 marketing industry, the ACMA must have regard to:
23 (a) the number of persons who would be likely to benefit from
24 the code or standard concerned; and
25 (b) the extent to which those persons are householders or small
26 business operators; and
27 (c) the legitimate business interests of participants in sections of
28 the fax marketing industry.

29 **107 Subsection 112(4)**

30 Omit “and (3C)”, substitute “, (3C) and (3D)”.

31 **108 Subsection 113(2)**

1 Omit “or the telemarketing industry”, substitute “, the telemarketing
2 industry or the fax marketing industry”.

3 **109 Paragraph 113(3)(y)**

4 Omit “telephone”, substitute “Australian”.

5 **110 At the end of subsection 113(3)**

6 Add:

7 ; (z) record-keeping practices to be followed in relation to
8 marketing faxes sent or attempted to be sent;

9 (za) action to be taken to limit the total number of marketing
10 faxes sent or attempted to be sent, by a particular participant
11 in a section of the fax marketing industry, during a particular
12 period to a particular Australian number.

13 **111 Paragraph 117(1)(a)**

14 Omit “or the telemarketing industry”, substitute “, the telemarketing
15 industry or the fax marketing industry”.

16 **112 Paragraph 117(1)(b)**

17 Omit “or telemarketing activities”, substitute “, telemarketing activities
18 or fax marketing activities”.

19 **113 Paragraph 117(1)(h)**

20 Repeal the paragraph, substitute:

21 (h) except in a case where:

22 (i) the code applies to participants in a section of the
23 telemarketing industry and deals with one or more
24 matters relating to the telemarketing activities of those
25 participants; or

26 (ii) the code applies to participants in a section of the fax
27 marketing industry and deals with one or more matters
28 relating to the fax marketing activities of those
29 participants;

30 the ACMA is satisfied that the Telecommunications Industry
31 Ombudsman has been consulted about the development of
32 the code; and

33 **114 Subparagraph 117(1)(k)(iii)**

1 Omit “or the telemarketing industry”, substitute “, the telemarketing
2 industry or the fax marketing industry”.

3 **115 Subsection 118(1)**

4 Omit “or the telemarketing industry”, substitute “, the telemarketing
5 industry or the fax marketing industry”.

6 **116 Paragraph 118(1)(a)**

7 Omit “or telemarketing activities”, substitute “, telemarketing activities
8 or fax marketing activities”.

9 **117 Subsection 118(3)**

10 Omit “or the telemarketing industry”, substitute “, the telemarketing
11 industry or the fax marketing industry”.

12 **118 Paragraph 118(4A)(c)**

13 Omit “or the telemarketing industry”, substitute “, the telemarketing
14 industry or the fax marketing industry”.

15 **119 Subsection 119(1)**

16 Omit “or the telemarketing industry”, substitute “, the telemarketing
17 industry or the fax marketing industry”.

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

20 **120 Paragraph 119(1)(b)**

21 Omit “or telemarketing activities”, substitute “, telemarketing activities
22 or fax marketing activities”.

23 **121 Paragraph 121(1)(a)**

24 Omit “or the telemarketing industry”, substitute “, the telemarketing
25 industry or the fax marketing industry”.

26 **122 Subsection 122(1)**

27 Omit “or the telemarketing industry”, substitute “, the telemarketing
28 industry or the fax marketing industry”.

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

1 Omit “or the telemarketing industry”, substitute “, the telemarketing
2 industry or the fax marketing industry”.

3 **124 Subparagraph 123(1)(a)(ii)**

4 Omit “or telemarketing activities”, substitute “telemarketing activities
5 or fax marketing activities”.

6 **125 Paragraph 124(1)(a)**

7 Omit “or the telemarketing industry”, substitute “, the telemarketing
8 industry or the fax marketing industry”.

9 **126 Subparagraph 124(1)(c)(ii)**

10 Omit “or telemarketing activities”, substitute “, telemarketing activities
11 or fax marketing activities”.

12 **127 Subparagraph 125(1)(a)(i)**

13 Omit “or the telemarketing industry”, substitute “, the telemarketing
14 industry or the fax marketing industry”.

15 **128 Subparagraph 125(1)(a)(ii)**

16 Omit “or telemarketing activities”, substitute “, telemarketing activities
17 or fax marketing activities”.

18 **129 Subsection 125(7)**

19 Omit “or the telemarketing industry”, substitute “, the telemarketing
20 industry or the fax marketing industry”.

21 **130 Subsection 125(7)**

22 Omit “or telemarketing activities”, substitute “, telemarketing activities
23 or fax marketing activities”.

24 **131 After section 125A**

25 Insert:

26 **125B ACMA must determine certain industry standards relating to**
27 **the fax marketing industry**

28 (1) The ACMA may, by legislative instrument, determine a standard
29 that:

- 1 (a) applies to participants in each section of the fax marketing
2 industry; and
- 3 (b) deals with the following matters relating to the fax marketing
4 activities of those participants:
- 5 (i) restricting the hours and/or days during which
6 marketing faxes may be sent, or attempted to be sent, to
7 an Australian number;
- 8 (ii) requiring that a marketing fax sent to an Australian
9 number must contain specified information about the
10 person who authorised the sending of the fax;
- 11 (iii) restricting the total number of marketing faxes sent, or
12 attempted to be sent, by the relevant participant during a
13 particular period to a particular Australian number;
- 14 (iv) requiring that, if a marketing fax sent to an Australian
15 number is authorised by a particular person (the
16 **authorising person**), the fax must contain information
17 about how the recipient of the fax may send a message
18 to the effect that the recipient does not want to receive
19 any marketing faxes authorised by the authorising
20 person.

21 Note: For variation and revocation, see subsection 33(3) of the *Acts*
22 *Interpretation Act 1901*.

- 23 (2) A standard under subsection (1) is to be known as an **industry**
24 **standard**.
- 25 (3) If the ACMA is satisfied that a body or association represents a
26 section of the fax marketing industry, the ACMA must consult the
27 body or association before determining a standard under
28 subsection (1).
- 29 (4) The ACMA must ensure that a standard is in force under
30 subsection (1) at all times after the commencement of this section.
- 31 (5) For the purposes of this section, **authorise**, when used in relation to
32 a marketing fax, has the same meaning as in the *Do Not Call*
33 *Register Act 2006*.

34 **132 Subsection 128(1)**

- 35 Omit “or the telemarketing industry”, substitute “, the telemarketing
36 industry or the fax marketing industry”.

1 **133 Subsection 129(1)**

2 Omit “or the telemarketing industry”, substitute “, the telemarketing
3 industry or the fax marketing industry”.

4 **134 Subsection 130(1)**

5 Omit “or the telemarketing industry”, substitute “, the telemarketing
6 industry or the fax marketing industry”.

7 **135 Paragraphs 130(1)(a) and (b)**

8 Omit “or telemarketing activities”, substitute “, telemarketing activities
9 or fax marketing activities”.

10 **136 Subsection 133(1A)**

11 After “125A”, insert “or 125B”.

12 **137 Section 135A**

13 After “125A”, insert “or 125B”.

14 **138 Paragraphs 139(1)(a) and (b)**

15 Omit “telemarketing activities”, substitute “telemarketing activities or
16 fax marketing activities”.

17 Note: The heading to section 139 is altered by inserting “**or fax marketing activities**” after
18 “**telemarketing activities**”.

19 **139 At the end of section 509**

20 Add:

21 (7) If it appears to the ACMA that:

22 (a) a person (the *first person*) wishes to make a complaint about:

23 (i) a contravention of a code registered under Part 6, where
24 the code applies to participants in a section of the fax
25 marketing industry (within the meaning of Part 6) and
26 deals with one or more matters relating to the fax
27 marketing activities (within the meaning of Part 6) of
28 those participants; or

29 (ii) a contravention of section 128 in relation to an industry
30 standard, where the standard applies to participants in a
31 section of the fax marketing industry (within the
32 meaning of Part 6) and deals with one or more matters

- 1 relating to the fax marketing activities (within the
2 meaning of Part 6) of those participants; or
3 (iii) a contravention of the *Do Not Call Register Act 2006* or
4 regulations under that Act; and
5 (b) the complaint relates to a marketing fax sent, or attempted to
6 be sent, to an Australian number; and
7 (c) the first person does not have sufficient information to
8 identify:
9 (i) the person who sent, or attempted to send, the fax; or
10 (ii) the person who caused the fax to be sent or attempted;
11 and
12 (d) the first person gives the ACMA such information about the
13 fax as the ACMA requires;
14 it is the duty of the ACMA to take reasonable steps to assist the
15 first person to identify whichever of the following is applicable:
16 (e) the person who sent, or attempted to send, the fax;
17 (f) the person who caused the fax to be sent or attempted.
18 (8) Subsection (7) does not limit subsection (4).

19 **140 After paragraph 515A(1)(b)**

20 Insert:

- 21 (ba) a contravention of a code registered under Part 6, where the
22 code applies to participants in a section of the fax marketing
23 industry (within the meaning of Part 6) and deals with one or
24 more matters relating to the fax marketing activities (within
25 the meaning of Part 6) of those participants;
26 (bb) a contravention of section 128 in relation to an industry
27 standard, where the standard applies to participants in a
28 section of the fax marketing industry (within the meaning of
29 Part 6) and deals with one or more matters relating to the fax
30 marketing activities (within the meaning of Part 6) of those
31 participants;