



# **Spam Act 2003**

**No. 129, 2003**

**An Act about spam, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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# Spam Act 2003

No. 129, 2003

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## **An Act about spam, and for related purposes**

[Assented to 12 December 2003]

The Parliament of Australia enacts:

### **Part 1—Introduction**

#### **1 Short title**

This Act may be cited as the *Spam Act 2003*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	12 December 2003
2. Sections 3 to 14	The day on which this Act receives the Royal Assent.	12 December 2003
3. Parts 2 to 6	On the day after the end of the period of 120 days beginning on the day on which this Act receives the Royal Assent.	10 April 2004
4. Section 41	On the day after the end of the period of 120 days beginning on the day on which this Act receives the Royal Assent.	10 April 2004
5. Section 42	The day on which this Act receives the Royal Assent.	12 December 2003
6. Sections 43 to 46	On the day after the end of the period of 120 days beginning on the day on which this Act receives the Royal Assent.	10 April 2004
7. Section 47	The day on which this Act receives the Royal Assent.	12 December 2003
8. Schedule 1	On the day after the end of the period of 120 days beginning on the day on which this Act receives the Royal Assent.	10 April 2004
9. Schedule 2	The day on which this Act receives the Royal Assent.	12 December 2003
10. Schedule 3	On the day after the end of the period of 120 days beginning on the day on which this Act receives the Royal Assent.	10 April 2004



Note: This table relates only to the provisions of this Act as originally passed by 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 Simplified outline**

The following is a simplified outline of this Act:

- This Act sets up a scheme for regulating commercial e-mail and other types of commercial electronic messages.
- Unsolicited commercial electronic messages must not be sent.
- Commercial electronic messages must include information about the individual or organisation who authorised the sending of the message.
- Commercial electronic messages must contain a functional unsubscribe facility.
- Address-harvesting software must not be supplied, acquired or used.
- An electronic address list produced using address-harvesting software must not be supplied, acquired or used.
- The main remedies for breaches of this Act are civil penalties and injunctions.

Note: The *Telecommunications Act 1997* contains additional provisions about commercial electronic messages. Those provisions include Part 6 (industry codes and standards), Part 26 (investigations), Part 27 (information-gathering powers) and Part 28 (enforcement).

### **4 Definitions**

In this Act, unless the contrary intention appears:

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**ACA** means the Australian Communications Authority.

**account** includes:

- (a) a free account; and
- (b) a pre-paid account; and
- (c) anything that may reasonably be regarded as the equivalent of an account.

**acquire**, when used in relation to goods or services, has the same meaning as in the *Trade Practices Act 1974*.

**address-harvesting software** means software that is specifically designed or marketed for use for:

- (a) searching the Internet for electronic addresses; and
- (b) collecting, compiling, capturing or otherwise harvesting those electronic addresses.

**agency** includes:

- (a) an armed force; and
- (b) a police force.

**Australia**, when used in a geographical sense, includes the external Territories.

**Australian link** has the meaning given by section 7.

**authorise**, when used in relation to the sending of an electronic message, has a meaning affected by section 8.

**business** includes a venture or concern in trade or commerce, whether or not conducted on a regular, repetitive or continuous basis.

**carriage service** has the same meaning as in the *Telecommunications Act 1997*.

**civil penalty provision** means any of the following provisions:

- (a) subsections 16(1), (6) and (9);
- (b) subsections 17(1) and (5);
- (c) subsections 18(1) and (6);

- (d) subsections 20(1) and (5);
- (e) subsections 21(1) and (3);
- (f) subsections 22(1) and (3);
- (g) a provision of the regulations that is declared to be a civil penalty provision in accordance with paragraph 45(2)(c).

***commercial electronic message*** has the meaning given by section 6.

***consent***, when used in relation to the sending of an electronic message, has the meaning given by Schedule 2.

***data processing device*** has the same meaning as in the *Telecommunications Act 1997*.

***dealing with***, when used in relation to a commercial electronic message, includes:

- (a) accessing the message; and
- (b) responding to the message; and
- (c) filtering the message.

***designated commercial electronic message*** has the meaning given by Schedule 1.

***director*** includes a member of the governing body of an organisation.

***educational institution*** includes:

- (a) a pre-school; and
- (b) a school; and
- (c) a college; and
- (d) a university.

***electronic message*** has the meaning given by section 5.

***employee*** includes an individual who is in the service of an armed force, a police force or a religious organisation.

***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

***Federal Court*** means the Federal Court of Australia.

***goods*** has the same meaning as in the *Trade Practices Act 1974*.

***government body*** means:

- (a) a department of the Commonwealth, a State or a Territory; or
- (b) an agency, authority or instrumentality of the Commonwealth, a State or a Territory; or
- (c) a department of the government of a foreign country; or
- (d) an agency, authority or instrumentality of the government of a foreign country; or
- (e) a department of the government of a part of a foreign country; or
- (f) an agency, authority or instrumentality of the government of a part of a foreign country.

***harvested-address list*** means:

- (a) a list of electronic addresses; or
- (b) a collection of electronic addresses; or
- (c) a compilation of electronic addresses;

where the production of the list, collection or compilation is, to any extent, directly or indirectly attributable to the use of address-harvesting software.

***international convention*** means:

- (a) a convention to which Australia is a party; or
- (b) an agreement between Australia and a foreign country.

***Internet carriage service*** means a listed carriage service that enables end-users to access the Internet.

***investment*** means any mode of application of money or other property for the purpose of gaining a return (whether by way of income, capital gain or any other form of return).

**listed carriage service** has the same meaning as in the *Telecommunications Act 1997*.

**logo** includes a trade mark.

**message** means information:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms.

**mistake** means reasonable mistake of fact.

**organisation** includes:

- (a) a body corporate; and
- (b) a partnership; and
- (c) a government body; and
- (d) a court or tribunal; and
- (e) an unincorporated body or association.

Express references in this Act to organisations do not imply that references in this Act to persons do not include bodies politic or corporate.

Note: Paragraph 22(1)(a) of the *Acts Interpretation Act 1901* provides that **person** includes a body politic or corporate as well as an individual.

**penalty unit** has the meaning given by section 4AA of the *Crimes Act 1914*.

**person** includes a partnership.

Note: For treatment of partnerships, see section 585 of the *Telecommunications Act 1997*.

**publish** includes:

- (a) publish on the Internet; and
- (b) publish to the public or a section of the public.

**registered political party** means a political party, or a branch or division of a political party, that is registered under:

- (a) the *Commonwealth Electoral Act 1918*; or
- (b) a law of a State or Territory that deals with electoral matters.

**relevant electronic account-holder**, in relation to the sending of an electronic message to an electronic address, means:

- (a) if the electronic address is an e-mail address—the individual or organisation who is responsible for the relevant e-mail account; or
- (b) if the message is sent to an electronic address in connection with an instant messaging service—the individual or organisation who is responsible for the relevant instant messaging account; or
- (c) if the electronic address is a telephone number—the individual or organisation who is responsible for the relevant telephone account; or
- (d) in any other case—the individual or organisation who is responsible for the relevant account.

**send** includes attempt to send.

Note: See also section 9.

**services** has the same meaning as in the *Trade Practices Act 1974*.

**software** includes a combination of software and associated data.

**standard telephone service** has the same meaning as in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

**supply**:

- (a) when used in relation to goods or services—has the same meaning as in the *Trade Practices Act 1974*; or
- (b) when used in relation to land—includes transfer; or
- (c) when used in relation to an interest in land—includes transfer or create.

**use** has a meaning affected by section 11.

**voice call** means:

- (a) a voice call within the ordinary meaning of that expression; or
- (b) a call that involves a recorded or synthetic voice; or
- (c) if a call covered by paragraph (a) or (b) is not practical for a particular customer with a disability (for example, because the customer has a hearing impairment)—a call that is equivalent to a call covered by either of those paragraphs; whether or not the customer responds by way of pressing buttons on a telephone handset or similar thing.

## **5 Electronic messages**

### *Basic definition*

- (1) For the purposes of this Act, an **electronic message** is a message sent:
  - (a) using:
    - (i) an Internet carriage service; or
    - (ii) any other listed carriage service; and
  - (b) to an electronic address in connection with:
    - (i) an e-mail account; or
    - (ii) an instant messaging account; or
    - (iii) a telephone account; or
    - (iv) a similar account.

Note: E-mail addresses and telephone numbers are examples of electronic addresses.
- (2) For the purposes of subsection (1), it is immaterial whether the electronic address exists.
- (3) For the purposes of subsection (1), it is immaterial whether the message reaches its intended destination.
- (4) Subsection (1) has effect subject to subsection (5).

*Excluded messages—voice calls*

- (5) If a message is sent by way of a voice call made using a standard telephone service, the message is not an *electronic message* for the purposes of this Act.

## 6 Commercial electronic messages

*Basic definition*

- (1) For the purposes of this Act, a *commercial electronic message* is an electronic message, where, having regard to:

- (a) the content of the message; and
- (b) the way in which the message is presented; and
- (c) the content that can be located using the links, telephone numbers or contact information (if any) set out in the message;

it would be concluded that the purpose, or one of the purposes, of the message 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 assist or enable a person, by a deception, to dishonestly obtain property belonging to another person; or
- (n) to assist or enable a person, by a deception, to dishonestly obtain a financial advantage from another person; or



- (o) to assist or enable a person to dishonestly obtain a gain from another person; or
  - (p) 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.
  - (4) Any 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);
    - (c) the person first mentioned in paragraph (1)(m), (n) or (o); may be the individual or organisation who sent the message or authorised the sending of the message.
  - (5) Paragraphs (1)(d) to (p) are to be read independently of each other.
  - (6) Subsection (1) has effect subject to subsection (7).

*Excluded messages—regulations*

- (7) The regulations may provide that a specified kind of electronic message is not a **commercial electronic message** for the purposes of this Act.

*Interpretation*

- (8) An expression used in paragraph (1)(m) of this section and in section 134.1 of the *Criminal Code* has the same meaning in that paragraph as it has in that section.
- (9) An expression used in paragraph (1)(n) of this section and in section 134.2 of the *Criminal Code* has the same meaning in that paragraph as it has in that section.

- (10) An expression used in paragraph (1)(o) of this section and in section 135.1 of the *Criminal Code* has the same meaning in that paragraph as it has in that section.

## 7 Australian link

For the purposes of this Act, a commercial electronic message has an *Australian link* if, and only if:

- (a) the message originates in Australia; or
- (b) the individual or organisation who sent the message, or authorised the sending of the message, is:
  - (i) an individual who is physically present in Australia when the message is sent; or
  - (ii) an organisation whose central management and control is in Australia when the message is sent; or
- (c) the computer, server or device that is used to access the message is located in Australia; or
- (d) the relevant electronic account-holder is:
  - (i) an individual who is physically present in Australia when the message is accessed; or
  - (ii) an organisation that carries on business or activities in Australia when the message is accessed; or
- (e) if the message cannot be delivered because the relevant electronic address does not exist—assuming that the electronic address existed, it is reasonably likely that the message would have been accessed using a computer, server or device located in Australia.

## 8 Authorising the sending of electronic messages

### *Attribution of authorisation to organisation*

- (1) For the purposes of this Act (including subsection (2)), if:
- (a) an individual authorises the sending of an electronic message; and
  - (b) the individual does so on behalf of an organisation;
- then:

- (c) the organisation is taken to authorise the sending of the electronic message; and
- (d) the individual is taken not to authorise the sending of the electronic message.

*Self-authorisation*

- (2) For the purposes of this Act, if:
  - (a) an electronic message is sent by an individual or organisation; and
  - (b) the sending of the message is not authorised by any other individual or organisation;the first-mentioned individual or organisation is taken to authorise the sending of the message.

## **9 Sending of electronic messages—carriage service providers**

- (1) For the purposes of this Act, a person does not *send* an electronic message, or cause an electronic message to be sent, merely because the person supplies a carriage service that enables the message to be sent.
- (2) Subsection (1) is enacted for the avoidance of doubt.

## **10 Continuity of partnerships**

For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

## **11 Extended meaning of *use***

Unless the contrary intention appears, a reference in this Act to the *use* of a thing is a reference to the use of the thing either:

- (a) in isolation; or
- (b) in conjunction with one or more other things.

**12 Crown to be bound**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

**13 Extension to external Territories**

This Act extends to every external Territory.

**14 Extra-territorial application**

Unless the contrary intention appears, this Act extends to acts, omissions, matters and things outside Australia.

## **Part 2—Rules about sending commercial electronic messages**

### **15 Simplified outline**

The following is a simplified outline of this Part:

- Unsolicited commercial electronic messages must not be sent.
- Commercial electronic messages must include information about the individual or organisation who authorised the sending of the message.
- Commercial electronic messages must contain a functional unsubscribe facility.

### **16 Unsolicited commercial electronic messages must not be sent**

- (1) A person must not send, or cause to be sent, a commercial electronic message that:
  - (a) has an Australian link; and
  - (b) is not a designated commercial electronic message.

Note 1: For *Australian link*, see section 7.

Note 2: For *designated commercial electronic message*, see Schedule 1.

- (2) Subsection (1) does not apply if the relevant electronic account-holder consented to the sending of the message.

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

- (3) Subsection (1) does not apply if the person:
  - (a) did not know; and
  - (b) could not, with reasonable diligence, have ascertained; that the message had an Australian link.

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- (4) Subsection (1) does not apply if the person sent the message, or caused the message to be sent, by mistake.
- (5) A person who wishes to rely on subsection (2), (3) or (4) bears an evidential burden in relation to that matter.

*Message must not be sent to a non-existent electronic address*

- (6) A person must not send, or cause to be sent, a commercial electronic message to a non-existent electronic address if:
  - (a) the person did not have reason to believe that the electronic address existed; and
  - (b) the electronic message:
    - (i) has an Australian link; and
    - (ii) is not a designated commercial electronic message.
- (7) Subsection (6) does not apply if the person:
  - (a) did not know; and
  - (b) could not, with reasonable diligence, have ascertained; that the message had an Australian link.
- (8) A person who wishes to rely on subsection (7) bears an evidential burden in relation to that matter.

*Ancillary contraventions*

- (9) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (1) or (6); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1) or (6); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1) or (6); or
  - (d) conspire with others to effect a contravention of subsection (1) or (6).
- (10) A person does not contravene subsection (9) merely because the person supplies a carriage service that enables an electronic message to be sent.

*Civil penalty provisions*

- (11) Subsections (1), (6) and (9) are ***civil penalty provisions***.

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

**17 Commercial electronic messages must include accurate sender information**

- (1) A person must not send, or cause to be sent, a commercial electronic message that has an Australian link unless:
- (a) the message clearly and accurately identifies the individual or organisation who authorised the sending of the message; and
  - (b) the message includes accurate information about how the recipient can readily contact that individual or organisation; and
  - (c) that information complies with the condition or conditions (if any) specified in the regulations; and
  - (d) that information is reasonably likely to be valid for at least 30 days after the message is sent.

Note: For ***Australian link***, see section 7.

- (2) Subsection (1) does not apply if the person:
- (a) did not know; and
  - (b) could not, with reasonable diligence, have ascertained; that the message had an Australian link.
- (3) Subsection (1) does not apply if the person sent the message, or caused the message to be sent, by mistake.
- (4) A person who wishes to rely on subsection (2) or (3) bears an evidential burden in relation to that matter.

*Ancillary contraventions*

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or

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- (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).
- (6) A person does not contravene subsection (5) merely because the person supplies a carriage service that enables an electronic message to be sent.

*Civil penalty provisions*

- (7) Subsections (1) and (5) are *civil penalty provisions*.

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

**18 Commercial electronic messages must contain a functional unsubscribe facility**

- (1) A person must not send, or cause to be sent, a commercial electronic message that:
- (a) has an Australian link; and
  - (b) is not a designated commercial electronic message;
- unless:
- (c) the message includes:
    - (i) a statement to the effect that the recipient may use an electronic address set out in the message to send an unsubscribe message to the individual or organisation who authorised the sending of the first-mentioned message; or
    - (ii) a statement to similar effect; and
  - (d) the statement is presented in a clear and conspicuous manner; and
  - (e) the electronic address is reasonably likely to be capable of receiving:
    - (i) the recipient's unsubscribe message (if any); and



- (ii) a reasonable number of similar unsubscribe messages sent by other recipients (if any) of the same message; at all times during a period of at least 30 days after the message is sent; and
- (f) the electronic address is legitimately obtained; and
- (g) the electronic address complies with the condition or conditions (if any) specified in the regulations.

Note 1: For *unsubscribe message*, see subsection (8).

Note 2: For *Australian link*, see section 7.

Note 3: For *designated commercial electronic message*, see Schedule 1.

- (2) Subsection (1) does not apply if the person:
  - (a) did not know; and
  - (b) could not, with reasonable diligence, have ascertained; that the message had an Australian link.
- (3) Subsection (1) does not apply to the extent (if any) to which it is inconsistent with the terms of a contract or other agreement between:
  - (a) the individual or organisation who authorised the sending of the first-mentioned message; and
  - (b) the relevant electronic account-holder.
- (4) Subsection (1) does not apply if the person sent the message, or caused the message to be sent, by mistake.
- (5) A person who wishes to rely on subsection (2), (3) or (4) bears an evidential burden in relation to that matter.

*Ancillary contraventions*

- (6) 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

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- (d) conspire with others to effect a contravention of subsection (1).
- (7) A person does not contravene subsection (6) merely because the person supplies a carriage service that enables an electronic message to be sent.

*Civil penalty provisions*

- (8) Subsections (1) and (6) are ***civil penalty provisions***.

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

*Unsubscribe message*

- (9) For the purposes of the application of this section to a commercial electronic message, where the sending of the message is authorised by an individual or organisation, an ***unsubscribe message*** is:
- (a) an electronic message to the effect that the relevant electronic account-holder does not want to receive any further commercial electronic messages from or authorised by that individual or organisation; or
  - (b) an electronic message to similar effect.

## **Part 3—Rules about address-harvesting software and harvested-address lists**

### **19 Simplified outline**

The following is a simplified outline of this Part:

- Address-harvesting software must not be supplied, acquired or used.
- An electronic address list produced using address-harvesting software must not be supplied, acquired or used.

### **20 Address-harvesting software and harvested-address lists must not be supplied**

- (1) A person (the *supplier*) must not supply or offer to supply:
  - (a) address-harvesting software; or
  - (b) a right to use address-harvesting software; or
  - (c) a harvested-address list; or
  - (d) a right to use a harvested-address list;to another person (the *customer*) if:
  - (e) the supplier is:
    - (i) an individual who is physically present in Australia at the time of the supply or offer; or
    - (ii) a body corporate or partnership that carries on business or activities in Australia at the time of the supply or offer; or
  - (f) the customer is:
    - (i) an individual who is physically present in Australia at the time of the supply or offer; or

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- (ii) a body corporate or partnership that carries on business or activities in Australia at the time of the supply or offer.

Note: For treatment of partnerships, see section 585 of the *Telecommunications Act 1997*.

- (2) Subsection (1) does not apply if the supplier had no reason to suspect that the customer, or another person, intended to use the address-harvesting software or the harvested-address list, as the case may be, in connection with sending commercial electronic messages in contravention of section 16.
- (3) Subsection (1) does not apply if the supplier:
  - (a) did not know; and
  - (b) could not, with reasonable diligence, have ascertained; that the customer was:
    - (c) an individual who was physically present in Australia at the time of the supply or offer; or
    - (d) a body corporate or partnership that carried on business or activities in Australia at the time of the supply or offer.
- (4) A person who wishes to rely on subsection (3) bears an evidential burden in relation to that matter.

*Ancillary contraventions*

- (5) 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*

- (6) Subsections (1) and (5) are ***civil penalty provisions***.

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

## **21 Address-harvesting software and harvested-address lists must not be acquired**

- (1) A person must not acquire:
- (a) address-harvesting software; or
  - (b) a right to use address-harvesting software; or
  - (c) a harvested-address list; or
  - (d) a right to use a harvested-address list;
- if the person is:
- (e) an individual who is physically present in Australia at the time of the acquisition; or
  - (f) a body corporate or partnership that carries on business or activities in Australia at the time of the acquisition.

Note: For treatment of partnerships, see section 585 of the *Telecommunications Act 1997*.

- (2) Subsection (1) does not apply if the person did not intend to use the address-harvesting software or the harvested-address list, as the case may be, in connection with sending commercial electronic messages in contravention of section 16.

### *Ancillary contraventions*

- (3) 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).

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*Civil penalty provisions*

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

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

**22 Address-harvesting software and harvested-address lists must not be used**

- (1) A person must not use:
- (a) address-harvesting software; or
  - (b) a harvested-address list;
- if the person is:
- (c) an individual who is physically present in Australia at the time of the use; or
  - (d) a body corporate or partnership that carries on business or activities in Australia at the time of the use.

Note: For treatment of partnerships, see section 585 of the *Telecommunications Act 1997*.

- (2) Subsection (1) does not apply in relation to the use of address-harvesting software or a harvested-address list, if the use was not in connection with sending commercial electronic messages in contravention of section 16.

*Ancillary contraventions*

- (3) 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*

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

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

## Part 4—Civil penalties

### 23 Simplified outline

The following is a simplified outline of this Part:

- Pecuniary penalties are payable for contraventions of civil penalty provisions.
- Proceedings for the recovery of penalties are to be instituted in the Federal Court.
- The Federal Court may make ancillary orders:
  - (a) directing the payment of compensation to a victim of a contravention of a civil penalty provision; and
  - (b) directing the payment to the Commonwealth of an amount up to the amount of any financial benefit that is attributable to a contravention of a civil penalty provision.

Note: Schedule 3 sets up a system of infringement notices relating to contraventions of civil penalty provisions.

### 24 Pecuniary penalties for contravention of civil penalty provisions

- (1) If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Court may order the person to pay to the Commonwealth such pecuniary penalty, in respect of each contravention, as the Court determines to be appropriate.
- (2) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and



- (c) the circumstances in which the contravention took place; and
- (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct; and
- (e) if the Court considers that it is appropriate to do so—whether the person has previously been found by a court in a foreign country to have engaged in any similar conduct.

## **25 Maximum penalties for contravention of civil penalty provisions**

- (1) The maximum penalty payable under subsection 24(1) by a person in respect of a contravention of a civil penalty provision depends on:
  - (a) whether the person has a prior record in relation to the civil penalty provision (see subsection (2)); and
  - (b) whether the person is a body corporate; and
  - (c) whether the civil penalty provision is subsection 16(1), (6) or (9).

### *Prior record*

- (2) If:
  - (a) on a particular day (the ***first day***), the Federal Court makes an order under subsection 24(1) against a person in respect of a contravention of a particular civil penalty provision; and
  - (b) that is the first occasion on which the Federal Court makes an order under subsection 24(1) against the person in respect of a contravention of the civil penalty provision;then, for the purposes of determining the penalty payable under subsection 24(1) by the person in respect of a contravention of the civil penalty provision that occurs after the first day, the person has a ***prior record*** in relation to the civil penalty provision.

### *Maximum penalty payable by body corporate—no prior record*

- (3) If a body corporate does not have a prior record in relation to a particular civil penalty provision:

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- (a) the penalty payable under subsection 24(1) by the body corporate in respect of a contravention of the civil penalty provision must not exceed:
  - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—100 penalty units; or
  - (ii) in any other case—50 penalty units; and
- (b) if the Federal Court finds that the body corporate has, on a particular day, committed 2 or more contraventions of the civil penalty provision—the total of the penalties payable under subsection 24(1) by the body corporate in respect of those contraventions must not exceed:
  - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—2,000 penalty units; or
  - (ii) in any other case—1,000 penalty units.

*Maximum penalty payable by a person other than a body corporate—no prior record*

- (4) If a person other than a body corporate does not have a prior record in relation to a particular civil penalty provision:
  - (a) the penalty payable under subsection 24(1) by the person in respect of a contravention of the civil penalty provision must not exceed:
    - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—20 penalty units; or
    - (ii) in any other case—10 penalty units; and
  - (b) if the Federal Court finds that the person has, on a particular day, committed 2 or more contraventions of the civil penalty provision—the total of the penalties payable under subsection 24(1) by the person in respect of those contraventions must not exceed:
    - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—400 penalty units; or
    - (ii) in any other case—200 penalty units.

*Maximum penalty payable by body corporate—prior record*

- (5) If a body corporate has a prior record in relation to a particular civil penalty provision:
- (a) the penalty payable under subsection 24(1) by the body corporate in respect of a contravention of the civil penalty provision must not exceed:
    - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—500 penalty units; or
    - (ii) in any other case—250 penalty units; and
  - (b) if the Federal Court finds that the body corporate has, on a particular day, committed 2 or more contraventions of the civil penalty provision—the total of the penalties payable under subsection 24(1) by the body corporate in respect of those contraventions must not exceed:
    - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—10,000 penalty units; or
    - (ii) in any other case—5,000 penalty units.

*Maximum penalty payable by a person other than a body corporate—prior record*

- (6) If a person other than a body corporate has a prior record in relation to a particular civil penalty provision:
- (a) the penalty payable under subsection 24(1) by the person in respect of a contravention of the civil penalty provision must not exceed:
    - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—100 penalty units; or
    - (ii) in any other case—50 penalty units; and
  - (b) if the Federal Court finds that the person has, on a particular day, committed 2 or more contraventions of the civil penalty provision—the total of the penalties payable under subsection 24(1) by the person in respect of those contraventions must not exceed:
    - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—2,000 penalty units; or
    - (ii) in any other case—1,000 penalty units.

## 26 Civil action for recovery of pecuniary penalties

- (1) The ACA may institute a proceeding in the Federal Court for the recovery on behalf of the Commonwealth of a pecuniary penalty referred to in section 24.
- (2) A proceeding under subsection (1) may be commenced within 6 years after the contravention.
- (3) The Federal Court may direct that 2 or more proceedings under subsection (1) are to be heard together.

## 27 Criminal proceedings not to be brought for contravention of civil penalty provisions

Criminal proceedings do not lie against a person only because the person has contravened a civil penalty provision.

## 28 Ancillary orders—compensation

- (1) If:
  - (a) in one or more proceedings under section 26, the Federal Court finds that a person (the *perpetrator*) has contravened one or more civil penalty provisions; and
  - (b) the Court is satisfied that another person (the *victim*) has suffered loss or damage as a result of any or all of those contraventions;the Court may, on the application of the ACA or the victim, make an order that the Court considers appropriate directing the perpetrator to compensate the victim.
- (2) 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 16 in relation to the sending of one or more commercial electronic messages, 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 messages;

- (b) the effect of dealing with the messages 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 messages;
  - (d) any loss of business opportunities suffered by the victim as a result of dealing with the messages;
  - (e) any other matters that the Court considers relevant.
- (3) The Federal Court may make an order under subsection (1), whether or not it makes an order under section 24.
- (4) An application under subsection (1) may be made at any time within 6 years after the contravention concerned.

### **29 Ancillary orders—recovery of financial benefit**

- (1) If:
- (a) in one or more proceedings under section 26, the Federal Court finds that a person has contravened one or more civil penalty provisions; and
  - (b) the Court is satisfied that the person has obtained (whether directly or indirectly) a financial benefit that is reasonably attributable to any or all of those contraventions;
- the Court may, on the application of the ACA, make an order directing the person to pay to the Commonwealth an amount up to the amount of the financial benefit.
- (2) The Federal Court may make an order under subsection (1), whether or not it makes an order under section 24.
- (3) An application under subsection (1) may be made at any time within 6 years after the contravention concerned.

### **30 Schedule 3 (infringement notices)**

Schedule 3 has effect.

## Part 5—Injunctions

### 31 Simplified outline

The following is a simplified outline of this Part:

- The Federal Court may grant injunctions in relation to contraventions of civil penalty provisions.

### 32 Injunctions

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of a civil penalty provision, the Federal Court may, on the application of the ACA, grant an injunction:
  - (a) restraining the person from engaging in the conduct; and
  - (b) if, in the Court's opinion, it is desirable to do so—requiring the person to do something.

#### *Performance injunctions*

- (2) If:
  - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be a contravention of a civil penalty provision;the Federal Court may, on the application of the ACA, grant an injunction requiring the person to do that act or thing.

### **33 Interim injunctions**

#### *Grant of interim injunction*

- (1) If an application is made to the Federal Court for an injunction under section 32, the Court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

#### *No undertakings as to damages*

- (2) The Federal Court is not to require an applicant for an injunction under section 32, as a condition of granting an interim injunction, to give any undertakings as to damages.

### **34 Discharge etc. of injunctions**

The Federal Court may discharge or vary an injunction granted under this Part.

### **35 Certain limits on granting injunctions not to apply**

#### *Restraining injunctions*

- (1) The power of the Federal Court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
  - (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

*Performance injunctions*

- (2) The power of the Federal Court to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

**36 Other powers of the Federal Court unaffected**

The powers conferred on the Federal Court under this Part are in addition to, and not instead of, any other powers of the Court, whether conferred by this Act or otherwise.



## **Part 6—Enforceable undertakings**

### **37 Simplified outline**

The following is a simplified outline of this Part:

- A person may give the ACA an enforceable undertaking in connection with a matter relating to:
  - (a) commercial electronic messages; or
  - (b) address-harvesting software.

### **38 Acceptance of undertakings**

- (1) The ACA may accept a written undertaking given by a person for the purposes of this section in connection with a matter relating to:
  - (a) commercial electronic messages; or
  - (b) address-harvesting software.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the ACA.

### **39 Enforcement of undertakings**

- (1) If the ACA considers that a person who gave an undertaking under section 38 has breached any of its terms, the ACA may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has breached a term of the undertaking, the Court may make any or all of the following orders:
  - (a) an order directing the person to comply with that term of the undertaking;

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- (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- (d) any other order that the Court considers appropriate.

**40 Assessment of compensation for breach of undertaking**

- (1) This section applies if, in a proceeding under section 39, the Federal Court finds that a person has breached a term of an undertaking relating to the sending of commercial electronic messages.
- (2) In determining whether another person (the *victim*) has suffered loss or damage as a result of the breach, 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 messages;
  - (b) the effect of dealing with the messages 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 messages;
  - (d) any loss of business opportunities suffered by the victim as a result of dealing with the messages;
  - (e) any other matters that the Court considers relevant.

## **Part 7—Miscellaneous**

### **41 Formal warnings—breach of civil penalty provision**

The ACA may issue a formal warning if a person contravenes a civil penalty provision.

### **42 Additional ACA functions**

The ACA has the following functions:

- (a) to conduct and/or co-ordinate community education programs about either or both of the following:
  - (i) unsolicited commercial electronic messages;
  - (ii) address-harvesting software;in consultation with relevant industry and consumer groups and government agencies;
- (b) to conduct and/or commission research into issues relating to either or both of the following:
  - (i) unsolicited commercial electronic messages;
  - (ii) address-harvesting software;
- (c) to liaise with regulatory and other relevant bodies overseas about co-operative arrangements for the prohibition or regulation of either or both of the following:
  - (i) unsolicited commercial electronic messages;
  - (ii) address-harvesting software.

### **43 Operation of State and Territory laws**

This Act is not intended to exclude or limit the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

#### **44 Implied freedom of political communication**

This Act does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

#### **45 Giving effect to international conventions**

- (1) The regulations may make provision for and in relation to giving effect to an international convention that deals with either or both of the following:
  - (a) commercial electronic messages;
  - (b) address-harvesting software.
- (2) Regulations made for the purposes of subsection (1) may:
  - (a) vest the Federal Court with jurisdiction in a matter or matters arising under the regulations; and
  - (b) prescribe penalties, not exceeding a fine of 50 penalty units, for offences against the regulations; and
  - (c) declare that a specified provision of the regulations is a civil penalty provision for the purposes of this Act.

#### **46 Review of operation of Act**

- (1) Before the end of the period of 2 years after the commencement of this section, the Minister must cause to be conducted a review of the operation of:
  - (a) this Act; and
  - (b) the *Telecommunications Act 1997* to the extent to which that Act relates to this Act; and
  - (c) Part 6 of the *Telecommunications Act 1997* to the extent to which that Part:
    - (i) relates to e-marketing activities (within the meaning of that Part); and
    - (ii) relates to activities that consist of carrying on business as an electronic messaging service provider (within the meaning of that Part); and

- (iii) deals with industry codes, and industry standards, relating to matters covered by paragraphs 113(3)(q) to (v) of that Act.
- (2) The Minister must cause to be prepared a report of a review under subsection (1).
- (3) The Minister must cause copies of a report to be tabled in each House of the Parliament within 15 sittings days of that House after the completion of the preparation of the report.

#### **47 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Schedule 1—Designated commercial electronic messages

Note: See section 4.

### 1 Object

The object of this Schedule is to define the expression *designated commercial electronic message*.

Note 1: Designated commercial electronic messages must comply with section 17 (commercial electronic messages must include information about the individual or organisation who authorised the sending of the message).

Note 2: Designated commercial electronic messages are exempt from section 16 (unsolicited commercial electronic messages must not be sent) and section 18 (commercial electronic messages must contain a functional unsubscribe facility).

### 2 Factual information

- (1) For the purposes of this Act, an electronic message is a *designated commercial electronic message* if:
- (a) the message consists of no more than factual information (with or without directly-related comment) and any or all of the following additional information:
    - (i) the name, logo and contact details of the individual or organisation who authorised the sending of the message;
    - (ii) the name and contact details of the author;
    - (iii) if the author is an employee—the name, logo and contact details of the author's employer;
    - (iv) if the author is a partner in a partnership—the name, logo and contact details of the partnership;
    - (v) if the author is a director or officer of an organisation—the name, logo and contact details of the organisation;

- (vi) if the message is sponsored—the name, logo and contact details of the sponsor;
  - (vii) information required to be included by section 17;
  - (viii) information that would have been required to be included by section 18 if that section had applied to the message; and
- (b) assuming that none of that additional information had been included in the message, the message would not have been a commercial electronic message; and
  - (c) the message complies with such other condition or conditions (if any) as are specified in the regulations.

### **3 Government bodies, political parties, religious organisations and charities**

For the purposes of this Act, an electronic message is a *designated commercial electronic message* if:

- (a) the sending of the message is authorised by any of the following bodies:
  - (i) a government body;
  - (ii) a registered political party;
  - (iii) a religious organisation;
  - (iv) a charity or charitable institution; and
- (b) the message relates to goods or services; and
- (c) the body is the supplier, or prospective supplier, of the goods or services concerned.

### **4 Educational institutions**

For the purposes of this Act, an electronic message is a *designated commercial electronic message* if:

- (a) the sending of the message is authorised by an educational institution; and
- (b) either or both of the following subparagraphs applies:
  - (i) the relevant electronic account-holder is, or has been, enrolled as a student in that institution;

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- (ii) a member or former member of the household of the relevant electronic account-holder is, or has been, enrolled as a student in that institution; and
- (c) the message relates to goods or services; and
- (d) the institution is the supplier, or prospective supplier, of the goods or services concerned.

**5 Regulations**

The regulations may provide that a specified kind of electronic message is a *designated commercial electronic message* for the purposes of this Act.



## Schedule 2—Consent

Note: See section 4.

### 1 Object

The object of this Schedule is to define the expression *consent*, when used in relation to the sending of an electronic message.

Note: The concept of consent is relevant to section 16 (unsolicited commercial electronic messages must not be sent). Subsection 16(2) provides that a contravention of subsection 16(1) does not happen if the relevant electronic account-holder consented to the sending of the message.

### 2 Basic definition

For the purposes of this Act, *consent* means:

- (a) express consent; or
- (b) consent that can reasonably be inferred from:
  - (i) the conduct; and
  - (ii) the business and other relationships;  
of the individual or organisation concerned.

### 3 Users of account authorised to consent on behalf of relevant electronic account-holder

- (1) For the purposes of this Act, if a person other than the relevant electronic account-holder uses the relevant account to send an electronic message about:
  - (a) consent; or
  - (b) withdrawal of consent; or
  - (c) refusal of consent;that person is taken to have been authorised to send that message on behalf of the relevant electronic account-holder.

Clause 4

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- (2) Subclause (1) does not, by implication, limit the circumstances in which a person other than the relevant electronic account-holder may:
- (a) consent; or
  - (b) withdraw consent; or
  - (c) refuse consent;
- on behalf of the relevant electronic account-holder.

**4 When consent may be inferred from publication of an electronic address**

- (1) For the purposes of this Act, the consent of the relevant electronic account-holder may not be inferred from the mere fact that the relevant electronic address has been published.

*Exception—conspicuous publication*

- (2) However, if:
- (a) a particular electronic address enables the public, or a section of the public, to send electronic messages to:
    - (i) a particular employee; or
    - (ii) a particular director or officer of an organisation; or
    - (iii) a particular partner in a partnership; or
    - (iv) a particular holder of a statutory or other office; or
    - (v) a particular self-employed individual; or
    - (vi) an individual from time to time holding, occupying or performing the duties of, a particular office or position within the operations of an organisation; or
    - (vii) an individual, or a group of individuals, from time to time performing a particular function, or fulfilling a particular role, within the operations of an organisation;and
  - (b) the electronic address has been conspicuously published; and
  - (c) it would be reasonable to assume that the publication occurred with the agreement of:

- (i) if subparagraph (a)(i), (ii), (iii), (iv) or (v) applies—the employee, director, officer, partner, office-holder or self-employed individual concerned; or
  - (ii) if subparagraph (a)(vi) or (vii) applies—the organisation concerned; and
- (d) the publication is not accompanied by:
- (i) a statement to the effect that the relevant electronic account-holder does not want to receive unsolicited commercial electronic messages at that electronic address; or
  - (ii) a statement to similar effect;

the relevant electronic account-holder is taken, for the purposes of this Act, to have consented to the sending of commercial electronic messages to that address, so long as the messages are relevant to:

- (e) if subparagraph (a)(i), (ii), (iii), (iv) or (v) applies—the work-related business, functions or duties of the employee, director, officer, partner, office-holder or self-employed individual concerned; or
- (f) if subparagraph (a)(vi) applies—the office or position concerned; or
- (g) if subparagraph (a)(vii) applies—the function or role concerned.

## **5 Regulations about consent**

- (1) The regulations may provide that, for the purposes of this Act, the consent of a relevant electronic account-holder may not be inferred in the circumstances specified in the regulations.
- (2) The regulations may provide that, for the purposes of this Act, the consent of a relevant electronic account-holder may be inferred in the circumstances specified in the regulations.

## **6 When withdrawal of consent takes effect**

- (1) For the purposes of this Act, if:
    - (a) one or more electronic messages have been sent to the relevant electronic account-holder's electronic address; and
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Clause 6

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- (b) the relevant electronic account-holder has consented to the sending of those commercial electronic messages to that electronic address; and
- (c) an individual or organisation authorised the sending of those commercial electronic messages to that electronic address; and
- (d) the relevant electronic account-holder, or a user of the relevant account, sends the individual or organisation:
  - (i) a message to the effect that the account-holder does not want to receive any further commercial electronic messages at that electronic address from or authorised by that individual or organisation; or
  - (ii) a message to similar effect;

the withdrawal of consent takes effect at the end of the period of 5 business days beginning on:

- (e) if the message referred to in paragraph (d) is an electronic message—the day on which the message was sent; or
  - (f) if the message referred to in paragraph (d) was sent by post—the day on which service of the message was effected (see section 29 of the *Acts Interpretation Act 1901*); or
  - (g) in any other case—the day on which the message was delivered.
- (2) For the purposes of subclause (1), a **business day** is a day that is not a Saturday, a Sunday or a public holiday in:
- (a) if the message referred to in paragraph (1)(d) is an electronic message—the place to which the message was sent; or
  - (b) if the message referred to in paragraph (1)(d) was sent by post—the place to which the message was sent; or
  - (c) in any other case—the place where the message was delivered.

## Schedule 3—Infringement notices

Note: See section 30.

### 1 Object

The object of this Schedule is to set up a system of infringement notices for contraventions of civil penalty provisions as an alternative to the institution of proceedings in the Federal Court.

### 2 Definitions

In this Schedule:

*authorised person* means:

- (a) the Chairman of the ACA; or
- (b) a member of the staff of the ACA appointed under clause 9.

*civil contravention* means a contravention of a civil penalty provision.

*infringement notice* means an infringement notice under clause 3.

### 3 When an infringement notice can be given

- (1) If an authorised person has reasonable grounds to believe that a person has, on a particular day, committed one or more contraventions of a particular civil penalty provision, the authorised person may give to the person an infringement notice relating to those contraventions.
- (2) An infringement notice must be given within 12 months after the day on which the civil contraventions are alleged to have taken place.
- (3) This clause does not authorise the giving of 2 or more infringement notices to a person in relation to contraventions of a

Clause 4

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particular civil penalty provision that allegedly occurred on the same day.

**4 Matters to be included in an infringement notice**

- (1) An infringement notice must:
- (a) set out the name of the person to whom the notice is given; and
  - (b) set out the name of the authorised person who gave the notice; and
  - (c) either:
    - (i) set out brief details of each of the alleged civil contraventions; or
    - (ii) be accompanied by one or more data processing devices that contain, in electronic form, brief details of each of the alleged civil contraventions; and
  - (d) contain a statement to the effect that the matter or matters will not be dealt with by the Federal Court if the penalty specified in the notice is paid to the ACA, on behalf of the Commonwealth, within:
    - (i) 28 days after the notice is given; or
    - (ii) if the ACA allows a longer period—that longer period; and
  - (e) give an explanation of how payment of the penalty is to be made; and
  - (f) set out such other matters (if any) as are specified by the regulations.

Note: For the amount of penalty, see clause 5.

- (2) For the purposes of paragraph (1)(c), the brief details must include the following information in relation to each alleged civil contravention:
- (a) the date of the alleged contravention;
  - (b) the civil penalty provision that was allegedly contravened.
- (3) Subparagraph (1)(c)(ii) does not authorise the inclusion of information in a data processing device unless, at the time the

infringement notice was given, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference.

- (4) This clause does not limit the operation of the *Electronic Transactions Act 1999*.

## 5 Amount of penalty

### *Infringement notice given to a body corporate*

- (1) The penalty to be specified in an infringement notice given to a body corporate must be a pecuniary penalty equal to the number of penalty units worked out using the table:

<b>Number of penalty units</b>		
<b>Item</b>	<b>In this case...</b>	<b>the number of penalty units is...</b>
1	the notice relates to a single alleged contravention of subsection 16(1), (6) or (9)	20
2	the notice relates to more than 1, but fewer than 50, alleged contraventions of subsection 16(1), (6) or (9)	the number obtained by multiplying 20 by the number of alleged contraventions
3	the notice relates to 50 or more alleged contraventions of subsection 16(1), (6) or (9)	1,000
4	the notice relates to a single alleged contravention of a civil penalty provision other than subsection 16(1), (6) or (9)	10
5	the notice relates to more than 1, but fewer than 50, alleged contraventions of a civil penalty provision other than subsection 16(1), (6) or (9)	the number obtained by multiplying 10 by the number of alleged contraventions

### Schedule 3 Infringement notices

#### Clause 5

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<b>Number of penalty units</b>		
<b>Item</b>	<b>In this case...</b>	<b>the number of penalty units is...</b>
6	the notice relates to 50 or more alleged contraventions of a civil penalty provision other than subsection 16(1), (6) or (9)	500

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*Infringement notice given to a person other than a body corporate*

- (2) The penalty to be specified in an infringement notice given to a person other than a body corporate must be a pecuniary penalty equal to the number of penalty units worked out using the table:

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<b>Number of penalty units</b>		
<b>Item</b>	<b>In this case...</b>	<b>the number of penalty units is...</b>
1	the notice relates to a single alleged contravention of subsection 16(1), (6) or (9)	4
2	the notice relates to more than 1, but fewer than 50, alleged contraventions of subsection 16(1), (6) or (9)	the number obtained by multiplying 4 by the number of alleged contraventions
3	the notice relates to 50 or more alleged contraventions of subsection 16(1), (6) or (9)	200
4	the notice relates to a single alleged contravention of a civil penalty provision other than subsection 16(1), (6) or (9)	2
5	the notice relates to more than 1, but fewer than 50, alleged contraventions of a civil penalty provision other than subsection 16(1), (6) or (9)	the number obtained by multiplying 2 by the number of alleged contraventions
6	the notice relates to 50 or more alleged contraventions of a civil penalty provision other than subsection 16(1), (6) or (9)	100

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## **6 Withdrawal of an infringement notice**

- (1) This clause applies if an infringement notice is given to a person.
- (2) An authorised person may, by written notice (the *withdrawal notice*) given to the person, withdraw the infringement notice.
- (3) To be effective, the withdrawal notice must be given to the person within 28 days after the infringement notice was given.

### *Refund of penalty if infringement notice withdrawn*

- (4) If:
  - (a) the penalty specified in the infringement notice is paid; and
  - (b) the infringement notice is withdrawn after the penalty is paid;the Commonwealth is liable to refund the penalty.

## **7 What happens if the penalty is paid**

- (1) This clause applies if:
  - (a) an infringement notice relating to one or more alleged civil contraventions is given to a person; and
  - (b) the penalty is paid in accordance with the infringement notice; and
  - (c) the infringement notice is not withdrawn.
- (2) Any liability of the person for the alleged civil contraventions is discharged.
- (3) Proceedings under Part 4 may not be brought against the person for the alleged civil contraventions.

## **8 Effect of this Schedule on civil proceedings**

This Schedule does not:

- (a) require an infringement notice to be given in relation to an alleged civil contravention; or

Clause 9

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- (b) affect the liability of a person to have proceedings under Part 4 brought against the person for an alleged civil contravention if:
  - (i) the person does not comply with an infringement notice relating to the contravention; or
  - (ii) an infringement notice relating to the contravention is not given to the person; or
  - (iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or
- (c) limit the Federal Court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings under Part 4 to have committed a civil contravention.

**9 Appointment of authorised person**

The ACA may, by writing, appoint a member of the staff of the ACA as an authorised person for the purposes of this Schedule.

**10 Regulations**

The regulations may make further provision in relation to infringement notices.

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*[Minister's second reading speech made in—  
House of Representatives on 18 September 2003  
Senate on 13 October 2003]*

(150/03)