



Spam (Consequential Amendments) Act 2003

No. 130, 2003

**An Act to deal with consequential matters relating
to the enactment of the *Spam Act 2003*, 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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**An Act to deal with consequential matters relating
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related purposes**

[Assented to 12 December 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Spam (Consequential Amendments)
Act 2003*.

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.

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 on which this Act receives the Royal Assent.	12 December 2003
2. Schedule 1, Part 1	The day on which this Act receives the Royal Assent.	12 December 2003
3. Schedule 1, Part 2	At the same time as Part 2 of the <i>Spam Act 2003</i> commences.	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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments commencing on Royal Assent

Telecommunications Act 1997

1 At the end of subsection 3(2)

Add:

; (j) to promote responsible practices in relation to the sending of commercial electronic messages.

2 Section 5

After “that represent sections of the telecommunications industry”, insert “or the e-marketing industry”.

3 Section 5

After “a particular participant in the telecommunications industry”, insert “or the e-marketing industry”.

4 Section 7

Insert:

commercial electronic message has the same meaning as in the *Spam Act 2003*.

5 Section 7

Insert:

e-marketing industry means an industry that involves carrying on an e-marketing activity.

6 Section 7

Insert:

Internet service provider has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

7 Section 106

After “telecommunications industry” (wherever occurring), insert “or the e-marketing industry”.

8 After section 108

Insert:

108A Electronic messaging service provider

- (1) For the purposes of this Part, if a person supplies, or proposes to supply, an electronic messaging service to the public, the person is an *electronic messaging service provider*.
- (2) For the purposes of subsection (1), a service is supplied to the public if, and only if, at least one end-user of the service is outside the immediate circle of the supplier of the service.
- (3) In this section:

electronic message has the same meaning as in the *Spam Act 2003*.

electronic messaging service means a service that enables any or all of the following electronic messages to be sent or received:

- (a) web-based e-mail;
- (b) instant messages;
- (c) text messages;
- (d) messages of a kind specified in the regulations.

message has the same meaning as in the *Spam Act 2003*.

108B Telecommunications industry

For the purposes of this Part, the *telecommunications industry* includes an industry that involves carrying on business as an electronic messaging service provider.

9 At the end of section 109

Add:

- ; or (g) carrying on business as an electronic messaging service provider.

10 After section 109

Insert:

109A E-marketing activity

- (1) For the purposes of this Part, an *e-marketing activity* is an activity to which subsection (2) or (3) applies.
- (2) This subsection applies to an activity that:
 - (a) is carried on by a person (the *first person*) under a contract or arrangement (other than a contract of employment); and
 - (b) consists of:
 - (i) using commercial electronic messages to market, advertise or promote goods or services, where the first person is not the supplier or prospective supplier of the goods or services; or
 - (ii) using commercial electronic messages to advertise or promote a supplier or prospective supplier of goods or services, where the first person is not the supplier or prospective supplier of the goods or services; or
 - (iii) using commercial electronic messages to market, advertise or promote land or interests in land, where the first person is not the supplier or prospective supplier of the land or interests in land; or
 - (iv) using commercial electronic messages to advertise or promote a supplier or prospective supplier of land or interests in land, where the first person is not the supplier or prospective supplier of the land or interests in land; or
 - (v) using commercial electronic messages to market, advertise or promote business opportunities or investment opportunities, where the first person is not the provider or prospective provider of the business opportunities or investment opportunities; or
 - (vi) using commercial electronic messages to advertise or promote a provider, or prospective provider, of business opportunities or investment opportunities, where the first person is not the provider or prospective provider

Schedule 1 Amendments

Part 1 Amendments commencing on Royal Assent

of the business opportunities or investment opportunities.

- (3) This subsection applies to an activity carried on by a person if:
- (a) the activity consists of using commercial electronic messages to market, advertise or promote goods or services; and
 - (b) the person is the supplier or prospective supplier of the goods or services; and
 - (c) the activity is the sole or principal means of marketing, advertising or promoting the goods or services.
- (4) An expression used in this section and in section 6 of the *Spam Act 2003* has the same meaning in this section as it has in that section.

11 Subsection 110(4)

After “by”, insert “a”.

12 At the end of subsection 110(2)

Add:

- ; (i) electronic messaging service providers.

13 After section 110

Insert:

110A Sections of the e-marketing industry

- (1) For the purposes of this Part, *sections of the e-marketing industry* are to be ascertained in accordance with this section.
- (2) If no determination is in force under subsection (3), all of the persons carrying on, or proposing to carry on, e-marketing activities constitute a single section of the e-marketing industry for the purposes of this Part.
- (3) The ACA may, by written instrument, determine that persons carrying on, or proposing to carry on, one or more specified kinds of e-marketing activity constitute a section of the e-marketing industry for the purposes of this Part.
- (4) The section must be identified in the determination by a unique name and/or number.

- (5) A determination under subsection (3) has effect accordingly.
- (6) Sections of the e-marketing industry determined under subsection (3):
 - (a) need not be mutually exclusive; and
 - (b) may consist of the aggregate of any 2 or more sections of the e-marketing industry mentioned in subsection (2) or determined under subsection (3); and
 - (c) may be subsets of a section of the e-marketing industry mentioned in subsection (2) or determined under subsection (3).
- (7) Subsection (6) does not, by implication, limit subsection (3).
- (8) A copy of a determination under subsection (3) is to be published in the *Gazette*.

14 After section 111

Insert:

111A Participants in a section of the e-marketing industry

For the purposes of this Part, if a person is a member of a group that constitutes a section of the e-marketing industry, the person is a *participant* in that section of the e-marketing industry.

111B Unsolicited commercial electronic messages

- (1) For the purposes of this Part, an *unsolicited commercial electronic message* is a commercial electronic message that is sent:
 - (a) without the consent of the relevant electronic account-holder;
or
 - (b) to a non-existent electronic address.
- (2) An expression used in this section and in the *Spam Act 2003* has the same meaning in this section as it has in that Act.

15 After subsection 112(1)

Insert:

Schedule 1 Amendments

Part 1 Amendments commencing on Royal Assent

- (1A) The Parliament intends that bodies or associations that the ACA is satisfied represent sections of the e-marketing industry should develop codes (*industry codes*) that are to apply to participants in the respective sections of the industry in relation to the e-marketing activities of the participants.

16 At the end of subsection 112(2)

Add “or the e-marketing industry”.

17 Subsection 112(3)

Before “, the ACA”, insert “(other than electronic messaging service providers)”.

18 After subsection 112(3)

Insert:

- (3A) In determining whether public interest considerations are being addressed in a way that does not impose undue financial and administrative burdens on participants in the section of the telecommunications industry that consists of electronic messaging service providers, the ACA must have regard to:
- (a) the number of end-users who would be likely to benefit from the code or standard concerned; and
 - (b) the extent to which those end-users are residential or small business end-users; and
 - (c) the legitimate business interests of electronic messaging service providers.
- (3B) In determining whether public interest considerations are being addressed in a way that does not impose undue financial and administrative burdens on participants in sections of the e-marketing industry, the ACA must have regard to:
- (a) the number of persons who would be likely to benefit from the code or standard concerned; and
 - (b) the extent to which those persons are householders or small business operators; and
 - (c) the legitimate business interests of participants in sections of the e-marketing industry.

19 Subsection 112(4)

Omit “Subsection (3) does not”, substitute “Subsections (3), (3A) and (3B) do not”.

20 Subsection 113(2)

After “telecommunications industry”, insert “or the e-marketing industry”.

21 At the end of subsection 113(3)

Add:

- ; (q) procedures to be followed by:
 - (i) Internet service providers; and
 - (ii) electronic messaging service providers;in dealing with unsolicited commercial electronic messages (including procedures relating to the provision or use of regularly updated software for filtering unsolicited commercial electronic messages);
- (r) giving customers information about the availability, use and appropriate application of software for filtering unsolicited commercial electronic messages;
- (s) action to be taken to assist in the development and evaluation of software for filtering unsolicited commercial electronic messages;
- (t) action to be taken in order to minimise or prevent the sending or delivery of unsolicited commercial electronic messages, including:
 - (i) the configuration of servers so as to minimise or prevent the sending or delivery of unsolicited commercial electronic messages; and
 - (ii) the shutdown of open relay servers;
- (u) action to be taken to ensure responsible practices in relation to the use of commercial electronic messages to market, advertise or promote goods or services to individuals who are under 18 years of age;
- (v) procedures to be followed in relation to the giving of consent by relevant electronic account-holders (within the meaning of the *Spam Act 2003*) to the sending of commercial electronic messages.

22 At the end of subsection 115(3)

Add “or (t)”.

23 Paragraph 117(1)(a)

After “telecommunications industry”, insert “or the e-marketing industry”.

24 Paragraph 117(1)(b)

After “telecommunications activities”, insert “or e-marketing activities, as the case may be,”.

25 Subparagraph 117(1)(k)(iii)

After “telecommunications industry”, insert “or the e-marketing industry”.

26 Section 118

After “telecommunications industry” (wherever occurring), insert “or the e-marketing industry”.

27 Paragraph 118(1)(a)

After “telecommunications activities”, insert “or e-marketing activities, as the case may be,”.

28 Subsection 119(1)

After “telecommunications industry”, insert “or the e-marketing industry”.

Note: The heading to section 119 is altered by adding at the end “**or the e-marketing industry**”.

29 Paragraph 119(1)(b)

After “telecommunications activities”, insert “or e-marketing activities, as the case may be,”.

30 Subparagraph 123(1)(a)(i)

After “telecommunications industry”, insert “or the e-marketing industry”.

31 Subparagraph 123(1)(a)(ii)

After “telecommunications activities”, insert “or e-marketing activities, as the case may be,”.

32 Paragraph 124(1)(a)

After “telecommunications industry”, insert “or the e-marketing industry”.

33 Subparagraph 124(1)(c)(ii)

After “telecommunications activities”, insert “or e-marketing activities, as the case may be,”.

34 Section 125

After “telecommunications industry” (wherever occurring), insert “or the e-marketing industry”.

35 Subparagraph 125(1)(a)(ii)

After “telecommunications activities”, insert “or e-marketing activities, as the case may be,”.

36 Subsection 125(7)

After “telecommunications activities”, insert “or e-marketing activities, as the case may be,”.

37 Subsection 130(1)

After “telecommunications industry”, insert “or the e-marketing industry”.

38 Paragraphs 130(1)(a) and (b)

After “telecommunications activities”, insert “or e-marketing activities, as the case may be,”.

39 At the end of Part 6

Add:

Division 7—Miscellaneous

137 Protection from civil proceedings

Civil proceedings do not lie against:

- (a) an Internet service provider; or
- (b) an electronic messaging service provider;

in respect of anything done by the provider in connection with:

- (c) an industry code registered under this Part; or
- (d) an industry standard;

in so far as the code or standard deals with the procedures referred to in paragraph 113(3)(q).

138 Implied freedom of political communication

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

40 Transitional—sections 121 and 122 of the *Telecommunications Act 1997*

Sections 121 and 122 of the *Telecommunications Act 1997* do not apply to a contravention of an industry code if:

- (a) the contravention occurred before the commencement of Part 2 of the *Spam Act 2003*; and
- (b) either:
 - (i) the code deals with a matter referred to in paragraph 113(3)(q), (r), (s), (t), (u) or (v) of the *Telecommunications Act 1997*; or
 - (ii) the code relates to activities that consist of carrying on business as an electronic messaging service provider.

41 Transitional—sections 128 and 129 of the *Telecommunications Act 1997*

Sections 128 and 129 of the *Telecommunications Act 1997* do not apply to a contravention of an industry standard if:

- (a) the contravention occurred before the commencement of Part 2 of the *Spam Act 2003*; and
-

- (b) either:
- (i) the code deals with a matter referred to in paragraph 113(3)(q), (r), (s), (t), (u) or (v) of the *Telecommunications Act 1997*; or
 - (ii) the code relates to activities that consist of carrying on business as an electronic messaging service provider.

Part 2—Amendments commencing at the same time as Part 2 of the Spam Act 2003 commences

Australian Communications Authority Act 1997

42 After subparagraph 6(j)(ia)

Insert:

(ib) the *Spam Act 2003*; or

43 After paragraph 8(3)(aa)

Insert:

(ab) the *Spam Act 2003*;

Telecommunications Act 1997

44 Section 7 (after paragraph (aa) of the definition of ACA’s telecommunications powers)

Insert:

(ab) the *Spam Act 2003*; or

45 Paragraph 121(1)(a)

After “telecommunications industry”, insert “or the e-marketing industry”.

46 Subsection 122(1)

After “telecommunications industry”, insert “or the e-marketing industry”.

47 Subsection 128(1)

After “telecommunications industry”, insert “or the e-marketing industry”.

48 Subsection 129(1)

After “telecommunications industry”, insert “or the e-marketing industry”.

49 Subsection 492(5) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act.

50 Subsection 502(5) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act.

51 After paragraph 508(aa)

Insert:

- (ab) a contravention of the *Spam Act 2003* or regulations under that Act;

52 After paragraph 510(1)(aa)

Insert:

- (ab) in the case of a matter covered by paragraph 508(ab)—the ACA has reason to suspect that a person may have contravened the *Spam Act 2003* or regulations under that Act; or

53 After subsection 512(1)

Insert:

- (1A) However, the ACA is not required to inform the respondent that the matter is to be investigated if:
 - (a) the matter relates to a possible breach of the *Spam Act 2003* or regulations under that Act; and
 - (b) the ACA has reasonable grounds to believe that informing the respondent is likely to result in the concealment, loss or destruction of a thing connected with the breach.

54 At the end of section 512

Add:

- (6) However, the ACA is not required to give the respondent an opportunity to make submissions if:
 - (a) the matter relates to a possible breach of the *Spam Act 2003* or regulations under that Act; and
 - (b) the ACA has reasonable grounds to believe that giving the respondent an opportunity to make submissions is likely to result in the concealment, loss or destruction of a thing connected with the breach.

55 At the end of section 513

Add:

- (2) However, the ACA is not required to inform the respondent of the decision and of the reasons for the decision if:
 - (a) the matter relates to a possible breach of the *Spam Act 2003* or regulations under that Act; and
 - (b) the ACA has reasonable grounds to believe that informing the respondent is likely to result in the concealment, loss or destruction of a thing connected with the breach.

56 At the end of section 518

Add:

- (3) However, the ACA is not required to give the person a reasonable period to make representations if:
 - (a) the matter relates to a possible breach of the *Spam Act 2003* or regulations under that Act; and
 - (b) the ACA has reasonable grounds to believe that giving the person a reasonable period to make representations is likely to result in the concealment, loss or destruction of a thing connected with the breach.

57 Division 1 of Part 28 (heading)

Repeal the heading, substitute:

Division 1—Introduction

58 Section 532

Before:

- An inspector may require the production of a carrier licence.

insert:

- Searches relating to breaches of the *Spam Act 2003* may be conducted:
 - (a) under the authority of a search warrant; or
 - (b) with the consent of the owner or occupier concerned.
- Searches to monitor compliance with the *Spam Act 2003* may be conducted:
 - (a) under the authority of a monitoring warrant; or
 - (b) with the consent of the occupier concerned.

59 Section 532

Omit “relevant to compliance with Part 21 (technical regulation)”, substitute “relevant to compliance with the *Spam Act 2003* or Part 21 of this Act (technical regulation)”.

60 After section 532

Insert:

532A References to the *Spam Act 2003*

In this Part:

Spam Act 2003 includes regulations under the *Spam Act 2003*.

Schedule 1 Amendments

Part 2 Amendments commencing at the same time as Part 2 of the Spam Act 2003 commences

61 Division 3 of Part 28 (heading)

Repeal the heading, substitute:

Division 3—Search warrants relating to breaches of the Spam Act 2003 or Part 21 of this Act

62 Subparagraph 535(1)(a)(iii)

Omit “and”, substitute “or”.

63 At the end of paragraph 535(1)(a)

Add:

- (iv) anything in respect of which a breach of the *Spam Act 2003* has happened; or
- (v) anything that may afford evidence about a breach of the *Spam Act 2003*; or
- (vi) anything that was used, or is intended to be used, for the purposes of breaching the *Spam Act 2003*; and

64 Paragraph 537(a)

After “offence”, insert “or breach”.

65 Division 4 of Part 28 (heading)

Repeal the heading, substitute:

Division 4—Searches and seizures relating to breaches of the Spam Act 2003 or Part 21 of this Act

66 After section 541

Insert:

541A When is a thing connected with a breach of the *Spam Act 2003*?

For the purposes of this Part, a thing is *connected with* a breach of the *Spam Act 2003* if it is:

- (a) a thing in respect of which the breach has happened; or
 - (b) a thing that may afford evidence about the breach; or
-

- (c) a thing that was used, or is intended to be used, for the purposes of the breach.

67 Subsection 542(1)

Omit all the words after “anything”, substitute:

connected with:

- (a) a particular offence against Part 21 of this Act; or
- (b) a particular breach of the *Spam Act 2003*.

Note: The heading to section 542 is altered by omitting “**Offence-related searches**” and substituting “**Searches**”.

68 At the end of paragraph 542(2)(d)

Add “or breach”.

69 After subsection 544(1)

Insert:

(1A) If:

- (a) in the course of searching, in accordance with a warrant issued under Division 3, for a particular thing in relation to a particular breach of the *Spam Act 2003*, an inspector finds a thing that the inspector believes on reasonable grounds to be:
 - (i) a thing that is connected with the breach, although not the thing specified in the warrant; or
 - (ii) a thing that is connected with another breach of the *Spam Act 2003*; and
 - (b) the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the breach or the other breach;
- the warrant is taken to authorise the inspector to seize that thing.

Note: The heading to section 544 is altered by adding at the end “**against Part 21 of this Act or other breaches of the Spam Act 2003**”.

70 Paragraph 546(1)(b)

Repeal the paragraph, substitute:

- (b) if either of the following proceedings are instituted within that period:

Schedule 1 Amendments

Part 2 Amendments commencing at the same time as Part 2 of the Spam Act 2003 commences

- (i) proceedings for an offence against, or arising out of, this Act in respect of which the thing may afford evidence;
 - (ii) proceedings for a breach of the *Spam Act 2003* in respect of which the thing may afford evidence;
- the proceedings (including any appeal to a court in relation to those proceedings) are completed.

71 After Division 5 of Part 28

Insert:

Division 5A—Searches to monitor compliance with the Spam Act 2003

547A Powers available to inspectors for monitoring compliance

- (1) For the purpose of finding out whether the *Spam Act 2003* has been complied with, an inspector may:
 - (a) enter any premises; and
 - (b) exercise the monitoring powers set out in section 547B.
- (2) An inspector is not authorised to enter premises under subsection (1) unless:
 - (a) the occupier of the premises has consented to the entry; or
 - (b) the entry is made under a warrant under section 547D.

Consent

- (3) Before obtaining the consent of a person for the purposes of paragraph (2)(a), the inspector must inform the person that he or she may refuse consent.
- (4) An entry of an inspector by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

547B Monitoring powers

- (1) The monitoring powers that an inspector may exercise under paragraph 547A(1)(b) are as follows:
 - (a) to search the premises;
-

-
- (b) to inspect and take photographs, or make sketches, of the premises or any substance or thing at the premises;
 - (c) to inspect any document kept at the premises;
 - (d) to remove, or make copies of, any such document;
 - (e) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
 - (f) to secure a thing, until a warrant is obtained to seize it, if:
 - (i) the inspector finds the thing during the exercise of powers on the premises; and
 - (ii) the inspector believes on reasonable grounds that the thing is connected with a breach of the *Spam Act 2003*; and
 - (iii) the inspector believes on reasonable grounds that the thing would be lost, destroyed or tampered with before the warrant can be obtained;
 - (g) to secure a computer, until an order under section 547J is obtained in relation to it, if:
 - (i) the inspector finds the computer during the exercise of powers on the premises; and
 - (ii) there are reasonable grounds for suspecting that a thing connected with a breach of the *Spam Act 2003* is held in, or is accessible from, the computer; and
 - (iii) the inspector believes on reasonable grounds that the computer, or the thing mentioned in subparagraph (ii), would be lost, destroyed or tampered with before the order can be obtained.
- (2) The monitoring powers that an inspector may exercise under paragraph 547A(1)(b) include the power to operate equipment at premises to see whether:
- (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is at the premises; and
 - (ii) can be used with the equipment or is associated with it;
- contains information that is relevant to determining whether there has been compliance with the *Spam Act 2003*.
-

Schedule 1 Amendments

Part 2 Amendments commencing at the same time as Part 2 of the Spam Act 2003 commences

- (3) If the inspector, after operating equipment at the premises, finds that the equipment, or that a tape, disk or other storage device at the premises, contains information mentioned in subsection (2), the inspector may:
- (a) operate facilities at the premises to put the information in documentary form and copy the document so produced; or
 - (b) if the information can be transferred to a tape, disk or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the information to the storage device, and remove the storage device from the premises.

Note: See also section 547J (order requiring person to assist with access to computer data).

547C Production of identity card etc.

An inspector (other than a member of a police force who is in uniform) who proposes to enter premises under section 547A must:

- (a) in the case of a member of a police force—produce, for inspection by the occupier of the premises, written evidence of the fact that the inspector is a member of a police force; or
- (b) in any other case—produce the inspector's identity card for inspection by the occupier;

and, if the inspector fails to do so, he or she is not authorised to enter the premises.

547D Monitoring warrants

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.
- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more inspectors should have access to the premises for the purposes of finding out whether the *Spam Act 2003* has been complied with.

- (3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
 - (4) If the premises are a residence, the magistrate must not issue the warrant unless:
 - (a) all of the following conditions are satisfied:
 - (i) the Federal Court has found, in proceedings under the *Spam Act 2003*, that an individual has breached that Act;
 - (ii) the finding has not been overturned on appeal;
 - (iii) the individual ordinarily resides at the premises;
 - (iv) the breach involved the use of equipment that is or was on those premises;
 - (v) the warrant is issued within 10 years after the finding; or
 - (b) all of the following conditions are satisfied:
 - (i) an individual has given an undertaking for the purposes of section 38 of the *Spam Act 2003*;
 - (ii) the undertaking is in force;
 - (iii) the individual ordinarily resides at the premises;
 - (iv) the undertaking applies to the use of equipment that is on those premises.
 - (5) The warrant must:
 - (a) authorise one or more inspectors (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in section 547B in relation to the premises; and
 - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
 - (d) state the purpose for which the warrant is issued.
-

Schedule 1 Amendments

Part 2 Amendments commencing at the same time as Part 2 of the Spam Act 2003 commences

547E Details of warrant to be given to occupier etc.

- (1) If:
 - (a) a warrant under section 547D in relation to premises is being executed by an inspector; and
 - (b) the occupier of the premises or another person who apparently represents the occupier is present at the premises; the inspector must make available to that person a copy of the warrant.
- (2) The inspector must identify himself or herself to that person.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

547F Announcement before entry

- (1) An inspector must, before entering premises under a warrant under section 547D:
 - (a) announce that he or she is authorised to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
 - (a) to ensure the safety of a person; or
 - (b) to ensure that the effective execution of the warrant is not frustrated.

547G Compensation for damage to equipment

- (1) This section applies if:
 - (a) as a result of equipment being operated as mentioned in section 547B:
 - (i) damage is caused to the equipment; or
 - (ii) the data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
-

- (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.
- (6) For the purposes of subsection (1):

damage, in relation to data, includes damage by erasure of data or addition of other data.

547H Occupier entitled to be present during search

- (1) If:
 - (a) a warrant under section 547D in relation to premises is being executed; and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises; the person is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.

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- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Division 5B—Access to computer data that is relevant to the Spam Act 2003

547J Access to computer data that is relevant to the *Spam Act 2003*

Scope

- (1) This section applies if:
- (a) both:
 - (i) a warrant is in force under Division 3 authorising an inspector to enter particular premises; and
 - (ii) the warrant relates to the *Spam Act 2003*; or
 - (b) a warrant is in force under Division 5A authorising an inspector to enter particular premises.

Application to magistrate for access order

- (2) The inspector may apply to a magistrate for an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow the inspector to do one or more of the following:
- (a) access data held in, or accessible from, a computer that is on those premises;
 - (b) copy the data to a data storage device;
 - (c) convert the data into documentary form.

Grant of access order

- (3) The magistrate may grant the order if the magistrate is satisfied that:
- (a) there are reasonable grounds for suspecting that a thing connected with a breach of the *Spam Act 2003* is held in, or is accessible from, the computer; and
 - (b) the specified person is:
 - (i) reasonably suspected of having been involved in the breach; or

- (ii) the owner or lessee of the computer; or
- (iii) an employee of the owner or lessee of the computer; and
- (c) the specified person has relevant knowledge of:
 - (i) the computer or a computer network of which the computer forms a part; or
 - (ii) measures applied to protect data held in, or accessible from, the computer.

Offence

- (4) A person is guilty of an offence if:
- (a) the person is subject to an order under this section; and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the order.

Penalty: Imprisonment for 6 months.

Definitions

- (5) In this section:

data includes:

- (a) information in any form; and
- (b) any program (or part of a program).

data held in a computer includes:

- (a) data held in any removable data storage device for the time being held in a computer; and
- (b) data held in a data storage device on a computer network of which the computer forms a part.

data storage device means a thing containing, or designed to contain, data for use by a computer.

- (6) This section does not, by implication, affect the meaning of the expression ***data*** when used in any other provision of this Act or the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

72 After subsection 549(1)

Insert:

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(1A) An inspector who has entered land, premises, a vessel, an aircraft or a vehicle under Division 4 or 5A may, to the extent that is reasonably necessary for the purpose of ascertaining whether the *Spam Act 2003* has been complied with, require the person to:

- (a) answer any questions put by the inspector; and
- (b) produce any documents requested by the inspector.

73 Subsections 549(2) and (3)

After “(1)”, insert “or (1A)”.

74 Paragraph 550(a)

Omit “or 547”, substitute “, 547 or 547B”.

75 At the end of paragraph 550(b)

Add “or (1A)”.

76 Paragraph 550(c)

Omit “Part 21”, substitute “the *Spam Act 2003* or Part 21 of this Act”.

77 Section 574A (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act.

78 Section 582

After “purposes of this Act,”, insert “the *Spam Act 2003*, regulations under the *Spam Act 2003*,”.

79 Section 582

After “Instruments under this Act”, insert “, the *Spam Act 2003*”.

80 Section 582

After “operation of this Act,”, insert “the *Spam Act 2003*, regulations under the *Spam Act 2003*,”.

81 Section 582

After “This Act,”, insert “the *Spam Act 2003*, regulations under the *Spam Act 2003*,”.

82 Subsection 585(2)

Repeal the subsection, substitute:

(2) In this section:

civil penalty provision includes a civil penalty provision within the meaning of the *Spam Act 2003*.

offence includes a breach of a civil penalty provision.

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act.

83 Subsection 586(2) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act.

84 Subsection 587(4) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act.

85 Subsection 589(6) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and

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- (b) Parts XIB and XIC of the *Trade Practices Act 1974*; and
- (c) the *Spam Act 2003*.

86 Subsection 591(3) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act.

87 Subsection 592(2) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and regulations under that Act; and
- (b) the *Spam Act 2003* and regulations under that Act.

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

(149/03)