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2004B00070

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Spam Regulations 2004

Statutory Rules 2004 No. 6¹

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Spam Act 2003*.

Dated 8 APR 2004 2004

PM Jeffery

Governor-General

By His Excellency's Command

DARYL WILLIAMS

Minister for Communications, Information Technology and the Arts

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Part 1 Preliminary

1.1 Name of Regulations

These Regulations are the *Spam Regulations 2004*.

1.2 Commencement

These Regulations commence on the commencement of Parts 2 to 6 of the *Spam Act 2003*.

1.3 Definitions

In these Regulations:

Act means the *Spam Act 2003*.

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

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

carrier has the same meaning as in the *Telecommunications Act 1997*.

premium service means a premium service mentioned in:

- (a) paragraph 3.12 (1) (a) of the *Telecommunications Regulations 2001*; or
- (b) subparagraph 3.12 (1) (b) (i) of those Regulations; or
- (c) paragraph 3.12 (1) (c) of those Regulations.

related person, in relation to the sender of a commercial electronic message, means a person who receives, or may receive, payment of a fee or charge, in relation to the use of an electronic address, on the basis of an agreement, arrangement or understanding with the sender, other than an agreement:

- (a) made between the sender and a carrier or carriage service provider; and

Regulation 1.3

- (b) under which the fee or charge to be imposed by the carrier or carriage service provider in that capacity will be less than would otherwise be charged for the use of that kind of electronic address.

Part 2 Commercial electronic messages

2.1 Facsimile messages

For subsection 6 (7) of the Act, a facsimile message is a specified kind of electronic message.

Note The effect of subsection 6 (7) of the Act is that a kind of electronic message specified in regulations is not a *commercial electronic message* for the purposes of the Act.

Regulation 3.1

Part 3

Rules about sending commercial electronic messages

3.1 Conditions

For paragraph 18 (1) (g) of the Act, this Part sets out conditions with which an electronic address must comply.

Note Paragraph 18 (1) (g) relates to an electronic address that is included in a commercial electronic message to send an unsubscribe message to the individual or organisation who authorised the sending of the commercial electronic message.

3.2 Unsubscribe facility — premium service

The use of the electronic address must not require the recipient of the commercial electronic message to use a premium service.

3.3 Unsubscribe facility — usual cost

The use of the electronic address must not cost more than the usual cost of using that kind of electronic address, using the same kind of technology as was used to receive the commercial electronic message.

3.4 Unsubscribe facility — fees and charges

- (1) The use of the electronic address must not require the recipient of the commercial electronic message to pay a fee or other charge to:
 - (a) the sender of the message; or
 - (b) a related person.

Regulation 3.4

- (2) If the sender is also a carrier or a carriage service provider, subregulation (1) does not apply to a fee or charge ordinarily imposed by the sender:
- (a) in the capacity of the carrier or carriage service provider; and
 - (b) on a monthly basis, or another periodic basis; for the use of carriage services.

Note

1. Notified in the *Commonwealth of Australia Gazette* on 6 2004.

8 April