

# EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

*Do Not Call Register Act 2006*

## ***Do Not Call Register (Access to Register) Determination 2017***

### **Authority**

The Australian Communications and Media Authority (**the ACMA**) has made the *Do Not Call Register (Access to Register) Determination 2017 (the Determination)* under subsection 20(1) of the *Do Not Call Register Act 2006 (the Act)* and subsection 33(3) of the *Acts Interpretation Act 1901 (AIA)*.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Under subsection 20(1) of the Act, the ACMA may make a determination about the way in which access-seekers may submit a list of telephone and fax numbers for checking (or ‘washing’<sup>1</sup>) against the Do Not Call Register and the manner in which the ACMA or the contracted service provider is to provide the information to the access-seeker. The determination may also provide for any other matters relating to access to the Do Not Call Register.

### **Purpose and operation of the instrument**

Under subsection 13(1) of the Act, the ACMA must keep or arrange for another person (the contracted service provider) to keep, on behalf of the ACMA, a register of Australian numbers for the purposes of the Act. The register is known as the Do Not Call Register.

The Do Not Call Register allows individuals to ‘opt out’ of receiving certain unsolicited telemarketing calls or faxes by registering their home or mobile telephone numbers that are primarily used for private or domestic purposes. Emergency service numbers and numbers used exclusively by government bodies or to transmit faxes are also eligible for inclusion on the Do Not Call Register

It may be an offence under section 11 of the Act to make, or to cause to be made, telemarketing calls to telephone numbers registered on the Do Not Call Register. Further, it may be an offence under section 12B of the Act to send a marketing fax to a number that is included on the Do Not Call Register. However, the Act allows access-seeker’s to submit lists of telephone numbers to the ACMA or the contracted service provider for checking against the Do Not Call Register (section 19 of the Act). The ACMA or the contracted service provider must then inform the access-seeker which numbers (if any) on the access-seekers’ list are (or are not) registered on the Do Not Call Register. This process of ‘washing’ access-seekers’ lists helps access-seekers to avoid breaching the Act (see subsections 11(3) and 12B(3) of the Act).

A description of each provision of the Determination is set out in the notes at **Attachment A**.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

### **Documents incorporated by reference**

Section 589 of the *Telecommunications Act 1997* relevantly allows for instruments made under the Act to make provision in relation to a matter by applying, adopting or incorporating matter contained in writing, as existing from time to time, regardless of whether the writing exists at the time the

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<sup>1</sup> Washing is a term used to describe the process by which industry access seekers access the register to check whether particular numbers are registered (and therefore should be excluded from telemarketing activity)

instrument is made. There are a number of provisions in the Determination that incorporate, or have the potential to incorporate, other documents as existing from time to time. Specifically:

- Subsection 7(3) provides that access-seekers must register with the ACMA by completing the registration procedure specified on the website of the ACMA or contracted service provider before being able to ‘wash’ numbers against the Do Not Call Register;
- Subsection 7(4) provides that access-seekers must comply with terms and conditions approved by the ACMA and published on the website of the ACMA or the contracted service provider;
- Subsection 7(5) provides that an access-seeker’s registration may be suspended or cancelled if the account becomes inactive as defined in the terms and conditions referred to in subsection 7(4);
- Subsection 7(7) provides that the ACMA may approve arrangements for accessing the Do Not Call Register under that particular subsection;
- Subsection 7(8) allows the ACMA to specify a new method for access-seekers to submit lists for washing against the Do Not Call Register, to be published on the website of the ACMA or the contracted service provider;
- Paragraphs 8(6)(b) and 8(7)(b) allow the ACMA to specify methods for returning lists of ‘washed’ numbers to access-seekers in particular circumstances, where the method is published on the website of the ACMA or the contracted service provider.

Access to the abovementioned documents is available on the website of the ACMA or the contracted service provider, free of charge. The ACMA’s website is [www.acma.gov.au](http://www.acma.gov.au), and the contracted service provider’s website is [www.donotcall.gov.au](http://www.donotcall.gov.au).

The Determination does not otherwise incorporate any document by reference.

### **Consultation**

The ACMA undertook consultation before the Determination was made in accordance with section 17 of the *Legislation Act 2003*.

On 19 March 2017, the ACMA commenced a consultation process on cost recovery arrangements for the Do Not Call Register and the related sunseting of three determinations which support the operation of the Do Not Call Register. The consultation paper, the draft Cost Recovery Implementation Statement and draft instruments were published on the ACMA’s website and provided directly to key industry stakeholders, including associations representing organisations engaged in telemarketing. The ACMA received five submissions to the consultation, although none of these submissions addressed the proposed terms of the Determination.

### **Regulatory impact assessment**

The Office of Best Practice Regulation has determined that the regulatory change effected by the Determination is minor or machinery in nature and has therefore verified that a Regulatory Impact Statement is not required (Exemption reference ID: 21869).

### **Statement of compatibility with human rights**

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislation Act 2003* applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

### ***Overview of the instrument***

The Determination has been made by the ACMA to specify the way in which access-seekers may submit a list of numbers for ‘washing’ against the Do Not Call Register, and the manner in which the ACMA or the contracted service provider is to provide the information to the access-seeker under the *Do Not Call Register Act 2006*.

### ***Human rights implications***

The ACMA has assessed whether the Determination is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the instrument does not engage any of those rights or freedoms.

### ***Conclusion***

The Determination is compatible with human rights as it does not raise any human rights issues.

## Notes to the *Do Not Call Register (Access to Register) Determination 2017*

### Part 1—Preliminary

#### Section 1 Name of Determination

This section provides for the instrument to be cited as the *Do Not Call Register (Access to Register) Determination 2017*.

#### Section 2 Commencement

This section provides for the instrument to commence at the start of the day after it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

#### Section 3 Authority

This section identifies the provision of the Act that authorises the making of the Determination, namely subsection 20(1) of the *Do Not Call Register Act 2006 (the Act)*.

#### Section 4 Repeal of the *Do Not Call Register (Access to Register) Determination 2007*

This section provides that the *Do Not Call Register (Access to Register) Determination 2007* (F2007L01218) is repealed.

#### Section 5 Definitions

This section defines a number of key terms used throughout the Determination. A number of other expressions used in the Determination are defined in the Act.

#### Section 6 References to other instruments or writing

This section provides that in the Determination, unless the contrary intention appears, a reference to another instrument or writing is a reference to that other instrument or writing as in force from time to time.

### Part 2—Access to the Do Not Call Register

#### Section 7 Manner in which submission under section 19 of the Act is to be made

Section 7 explains how a list of Australian numbers is to be submitted to the ACMA or the contracted service provider under subsection 19(1) of the Act.

Subsection 7(2) specifies the length and nature of the numbers to be included on the list to be submitted.

Subsection 7(3) requires that, to be eligible to submit a list, an access-seeker must first register with the ACMA by completing the registration procedure approved by the ACMA and published on either the ACMA's website or that of the contracted service provider.

Subsection 7(4) requires a registered access-seeker to comply with terms and conditions approved by the ACMA. Such terms and conditions must be specified on the ACMA's website or on the contracted service provider's website.

Subsection 7(5) specifies that if an access-seeker's account becomes inactive as defined by the terms and conditions referred to in subsection 7(4), the ACMA may deregister or suspend an access-seeker. Deregistration or suspension must occur in accordance with the procedures set out in the terms and conditions.

Subsection 7(6) provides that a registered access-seeker may submit a list for 'washing' against the Do Not Call Register by uploading such a list via a secure path in Comma Separated Variable (CSV) format. The subsection specifies that the secure path be available on the ACMA's website or on the website of the contracted service provider.

Subsection 7(7) provides for a facility by which a registered access-seeker may submit a list for 'washing' against the Do Not Call Register by entering up to 10 numbers at a time, in accordance with arrangements approved by the ACMA. The subsection specifies that such a facility be located on the ACMA's website or on the website of the contracted service provider. Access-seekers are not limited as to the number of times that this process can be repeated. The arrangements approved by the ACMA will explain the way in which the series of entries will be treated as one list.

Subsection 7(8) allows an access-seeker to submit a list for 'washing' against the Do Not Call Register in another manner approved by the ACMA. This alternative manner will be specified on the ACMA's website or on the website of the contracted service provider.

Subsection 7(9) provides that an access-seeker must not submit a list in any other way.

## **Section 8 Informing access-seekers about numbers registered or not registered on the Do Not Call Register**

Section 8 explains how the ACMA or the contracted service provider may provide relevant information to an access-seeker in accordance with paragraphs 19(2)(d), 19(2)(e) and 19(2)(f) of the Act.

Section 8 requires the ACMA or the contracted service provider to return the information to the access-seeker in the same manner used by the access-seeker to submit the list. An exception to this is specified in subsections 8(6) and 8(7). Under those subsections, if an access-seeker submitted a list in another manner approved by the ACMA, the ACMA or contracted service provider must make the information available for secure download in Comma Separated Variable (*CSV*) format or in another manner approved by the ACMA. The other manner must be specified on the website of the ACMA or the contracted service provider's website.

Under subsections 8(4) and 8(5), if an access-seeker submitted a list by entering numbers on a facility on the ACMA or contracted service provider's website, then the ACMA or contracted service provider must display the information on the website as soon as practicable after the numbers are entered.

## **Section 9 Return of list**

Subsection 9(1) states that if an access-seeker submits a list in accordance with section 7, the party to whom the list was submitted (i.e. the ACMA or the contracted service provider) must return the list in a way that shows which numbers are and are not listed on the Do Not Call Register, and which purported numbers (if any) have not been treated as Australian numbers.

The subsection includes a note that a purported number may not be treated as an Australian number in the following circumstances:

- where it does not meet the specifications in subsection 7(2); or

- where the information that relates to the purported number shows that it is not an Australian number; or
- for another reason.

Subsection 9(2) specifies the information that a person who is obliged to return a list under section 8 must give the access-seeker at the same time as returning the list.

### **Part 3–Savings and Transitional Arrangements**

#### **Section 10 Transitional – registration**

Section 10 provides that registrations in force under subsection 7(3) of the *Do Not Call Register (Access to Register) Determination (the old Determination)* continue in force under subsection 7(3) of the *Determination (the new Determination)*. This is to avoid the need for access-seekers to re-register. The conditions applicable to all registrations are those that apply under the new Determination.

#### **Section 11 Lists submitted under the old Determination, but not returned**

Section 11 ensures that lists submitted for ‘washing’ under the old Determination, and which have not yet been returned to the access seeker, are ‘washed’ under the new Determination. The section has been drafted noting that as a practical matter all affected lists will have been submitted to the contracted service provider for washing. The ACMA does not wash lists and has not done so at any time since the commencement of the Act.

Subsection 11(1) ensures that a list submitted under subsection 4(4) of the old Determination, by uploading the list in CSV format via a secure path available on the contracted service provider’s website, and which has not been returned at the time of the commencement of the new Determination, must be treated as having been submitted under paragraph 7(6)(b) of the new Determination. This will then enliven the requirements subsection 8(3) and section 9 of the new Determination, ensuring that the contracted service provider is required to provide the washed list to the access-seeker in CSV format via a secure path from the contracted service provider’s website.

Subsection 11(2) covers off on the possibility that a list will be validly submitted to the contracted service provider under subsection 4(5) of the old Determination, using a CD-ROM. The option to submit lists in this way is not included in the new Determination, as it has been found that it is not used by access-seekers. However, it is necessary to ensure that any such valid submission under the old Determination be dealt with. Accordingly, subsection 14(2) provides that any list submitted under subsection 4(5) of the old Determination, but which has not been returned as required by subsection 8(4) and section 9 of the old Determination, be returned in the form and manner that would be required under the old Determination.

Subsection 11(3) ensures that a list submitted under subsection 4(6) of the old Determination, by entering up to 10 numbers at a time on a facility available on the contracted service provider’s website, which has not been returned at the time of the commencement of the new Determination, must be treated as having been submitted under paragraph 7(7)(b) of the new Determination. This will then enliven the requirements subsection 8(5) and section 9 of the new Determination, ensuring that the contracted service provider is required to provide the washed list to the access-seeker by displaying the information on its website as soon as practicable after the numbers are entered.

Subsection 11(4) ensures that a list submitted to the contracted service provider under subsection 4(7) of the old Determination, using a method approved by the ACMA and specified on the ACMA’s website, and which has not been returned at the time of the commencement of the new Determination, must be treated as having been submitted under paragraph 7(8)(b) of the new Determination. This will

then enliven the requirements subsection 8(7) and section 9 of the new Determination, ensuring that the contracted service provider is required to provide the washed list to the access-seeker in CSV format via a secure path from the contracted service provider's website, or in another manner that is approved by the ACMA and specified on the contracted service provider's website.