

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Do Not Call Register Act 2006

Do Not Call Register (Administration and Operation) Determination 2017

Authority

The Australian Communications and Media Authority (the **ACMA**) has made the *Do Not Call Register (Administration and Operation) Determination 2017* (the **Determination**) under subsection 18(1) of the *Do Not Call Register Act 2006* (the **Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (the **AIA**).

Under subsection 18(1) of the Act, the ACMA may make a determination that makes provision for and in relation to any or all of the following matters:

- (a) the form of applications for Australian numbers to be entered on the Do Not Call Register (the **Register**);
- (b) the manner in which such applications are to be made
- (c) the manner in which entries are to be made on the Register;
- (d) the correction of entries in the Register;
- (e) the removal of entries from the Register; and
- (f) any other matter relating to the administration or operation of the Register.

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.

Purpose and operation of the Determination

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 Register allows applicants 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, numbers used exclusively by government bodies, and numbers used to transmit or receive faxes are also eligible to be entered on the Register.

Under section 15 of the Act, an application for an Australian number to be entered on the Register may be made by the relevant account-holder or a nominee of the relevant account-holder. Where such an application is made, the number must be registered under section 16 of the Act where the number is eligible to be registered. A number that has been registered on the Register may be removed in accordance with a determination made under subsection 18(1) of the Act.

Pursuant to subsection 18(1) of the Act, the Determination sets out the requirements for applications for registration, as well as other requirements regarding the registration, correction and removal of numbers on the Register.

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* (the **LA**).

Documents incorporated by reference

Section 589 of the *Telecommunications Act 1997* (the **Telco Act**) 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 instrument is made.

The Determination incorporates, or otherwise refers to the Act and the Telco Act. Section 5 of the Determination adopts relevant definitions from the Act. Paragraph 12(3)(c) of the Determination makes provision for the contracted service provider to refer to the ACMA any complaints about a breach of the Act, any regulations made under that Act, and any code made, or standard registered, under the Telco Act that relates to the Register. These Acts can be accessed at: www.legislation.gov.au.

There is a potential for the ACMA to incorporate instruments or matter contained in writing under sections 7, 8 and 10 of the Determination, as in force from time to time, on the ACMA's website (www.acma.gov.au) or, if the Register is kept by a contracted service provider, the contracted service provider's website (www.donotcall.gov.au).

Consultation

Before the instrument was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

On 20 March 2017, the ACMA commenced a consultation process on cost recovery arrangements for the Register and the related sunseting of three determinations which support the operation of the Register. The consultation paper, the draft Cost Recovery Implementation Statement and draft determinations 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 revisions to 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 of the LA¹ 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 support the operation of the Register by specifying the manner in which applications may be made for registration of a number on the Register, correction of an entry on the Register and removal of an entry from the Register.

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.

Attachment A

¹ Section 42 provides for the parliamentary disallowance of legislative instruments.

Notes to the *Do Not Call Register (Administration and Operation) Determination 2017*

Part 1—Preliminary

Section 1 Name of Determination

This section provides for the Determination to be cited as the *Do Not Call Register (Administration and Operation) Determination 2017*.

Section 2 Commencement

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

Section 3 Authority

This section identifies the provision that authorises the making of the Determination, namely subsection 18(1) of the *Do Not Call Register Act 2006* (the **Act**).

Section 4 Repeal of the *Do Not Call Register (Administration and Operation) Determination 2007*

This section provides that the *Do Not Call Register (Administration and Operation) Determination 2007* (F2007LO1220) 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—Administration and operation of the Do Not Call Register

Section 7 Applications for registration and applications to check entries on the Do Not Call Register

Section 7 explains how applications for registration of Australian numbers and checking of entries on the Do Not Call Register (the **Register**) may be made.

Subsection 7(1) provides that a relevant account-holder, or a nominee of a relevant account-holder, may apply in accordance with the Act to register an Australian number on the Register, and may apply to check whether a number of the relevant account-holder has been registered.

Subsection 7(2) specifies the methods that a relevant account-holder or a nominee of a relevant account-holder can use to make an application to register an Australian number or to check an entry on the Register. Those methods are by telephone, via the internet, by post, by fax, by email, or in any other way approved by the ACMA and specified on the ACMA's website or, if the Register is kept by a contracted service provider, the website of the contracted service provider. Exceptions apply as set out in subsections 7(3), 7(4), 7(5) and 7(6).

Subsection 7(3) states that a relevant account-holder may only apply to register a fax number by telephone, or check the registration of a fax number by telephone, if the ACMA so approves that

application method in respect of such applications and the approval is specified on the ACMA's website or, if the Register is kept by a contracted service provider, the contracted service provider's website.

Subsection 7(4) provides that a bulk application by a relevant account-holder to register Australian numbers, or to check entries on the Register, may only be made by telephone, post, fax or email if the ACMA has approved that application method and the approval is specified on the ACMA's website or, if the Register is kept by a contracted service provider, the contracted service provider's website. Section 5 defines 'bulk application' to mean 'an application in respect of 21 or more Australian numbers submitted at the same time by the same applicant'.

Subsection 7(5) provides that, unless the nominee is making a bulk application, a nominee of a relevant account-holder may only apply to register an Australian number, or to check an entry on the Register by telephone or via the internet if the ACMA has approved that application method and the approval is specified on the ACMA's website or, if the Register is kept by a contracted service provider, the contracted service provider's website.

Subsection 7(6) provides that, if a nominee is making a bulk application to register Australian numbers, or to check entries on the Register, the nominee may only do so by telephone, post, fax or email if the ACMA has approved that application method and the approval is specified on the ACMA's website or, if the Register is kept by a contracted service provider, the contracted service provider's website.

Subsection 7(7) provides that an application to register an Australian number on the Register, or to check an entry on the Register, using any of the methods set out in section 7, must be made in accordance with any written procedure approved by the ACMA and include any information reasonably required by the ACMA and specified on the ACMA's website or, if the Register is kept by a contracted service provider, the contracted service provider's website.

Subsection 7(8) states that, if an application to register an Australian number is made in accordance with the Determination, the ACMA or contracted service provider must enter the Australian number on the Register.

Subsection 7(9) requires that, if an application is made in accordance with the Determination to check an entry on the Register, the ACMA or the contracted service provider must advise the applicant as soon as practicable whether the number is on the Register.

Section 8 Applications for correction of entries made on the Do Not Call Register

Section 8 sets out the application methods that a relevant account-holder, or a nominee of a relevant account-holder, may use to correct an entry on the Register.

Subsection 8(1) provides that a relevant account-holder, or a nominee of a relevant account-holder, may apply to correct an entry on the Register.

Subsection 8(2) sets out the methods that can be used by a relevant account-holder, or nominee of a relevant account holder to apply to correct an entry on the Register. Those methods are by telephone, via the internet, by post, by fax, by email, or in any other way approved by the ACMA and specified on the ACMA's website or, if the Register is kept by a contracted service provider, the website of the contracted service provider. Exceptions apply as set out in subsections 8(3) and 8(4).

Subsection 8(3) provides that, unless the application is a bulk application, a relevant account-holder or nominee cannot apply to correct an entry on the Register by telephone or via the internet unless the ACMA has approved that application method and the approval is specified on the ACMA's website or, if the Register is kept by a contracted service provider, the contracted service provider's website.

Subsection 8(4) provides that, if the application is a bulk application, a relevant account-holder or nominee may only apply to correct entries on the Register by telephone, post, fax or email if the

ACMA has approved that application method and the approval is specified on the ACMA's website or, if the Register is kept by a contracted service provider, the contracted service provider's website.

Subsection 8(5) provides that an application to correct an entry on the Register made using any of the application methods set out in section 8, must be made in accordance with any written procedure approved by the ACMA and include any information reasonably required by the ACMA and specified on the ACMA's website or, if the Register is kept by a contracted service provider, the contracted service provider's website.

Section 9 Correction of the Do Not Call Register

Section 9 provides for the ACMA or the contracted service provider to check and correct entries on the Register.

Subsection 9(1) provides that the ACMA or the contracted service provider may check the correctness of an entry on the Register at any time. The ACMA or the contracted service provider must check the Register if an application under section 8 is received in relation to that entry.

Subsection 9(2) provides that if the ACMA or the contracted service provider determines that an entry on the Register is incorrect, the ACMA or the contracted service provider is required to correct the entry. Before the correction is made, the ACMA or the contracted service provider must make reasonable efforts to inform the person identified as the relevant account-holder for the number associated with the entry that the entry is to be corrected.

Section 10 Applications for removal of entries from the Do Not Call Register

Section 10 explains the application methods that a relevant account-holder, or a nominee of a relevant account-holder, may use to remove an entry from the Register.

Subsection 10(1) provides that a relevant account-holder, or a nominee of a relevant account-holder, may apply to remove an entry from the Register.

Subsection 10(2) sets out the methods that can be used to apply to remove an entry from the Register. Those methods are by telephone, via the internet, by post, by fax, by email, or in any other way approved by the ACMA and specified on the ACMA's website or, if the Register is kept by a contracted service provider, the website of the contracted service provider. Exceptions apply as set out in subsections 10(3), 10(4), 10(5), and 10(6).

Subsection 10(3) provides that, where an application is not a bulk application, and does not relate to a fax number, a relevant account-holder may only apply to remove an entry via the internet if the ACMA has approved that application method and the approval is specified on the ACMA's website or, if the Register is kept by a contracted service provider, the contracted service provider's website.

Subsection 10(4) sets out that, where an application is not a bulk application, and relates to a fax number, a relevant account-holder may only apply to remove an entry by telephone or via the internet if the ACMA has approved that application method and the approval is specified on the ACMA's website or, if the Register is kept by a contracted service provider, the contracted service provider's website.

Subsection 10(5) provides that, where an application is not a bulk application, a nominee may only apply to remove an entry by telephone or via the internet if the ACMA has approved that application method and the approval is specified on the ACMA's website or, if the Register is kept by a contracted service provider, the contracted service provider's website.

Subsection 10(6) provides that, if a relevant account-holder or nominee of a relevant account-holder is making a bulk application to remove entries, they may only apply by telephone, post, fax or email if the ACMA has approved that application method and the approval is specified on the ACMA's website or, if the Register is kept by a contracted service provider, the contracted service provider's website.

Subsection 10(7) provides that an application to remove an entry from the Register, using any of the application methods set out in section 10, must be made in accordance with any written procedure approved by the ACMA and include any information reasonably required by the ACMA and specified on the ACMA's website or, if the Register is kept by a contracted service provider, the contracted service provider's website.

Subsection 10(8) requires that, if an application to remove an entry from the Register is made in accordance with the Determination, the ACMA or contracted service provider must remove the entry from the Register.

Section 11 Removal of ineligible numbers from the Do Not Call Register

Section 11 sets out the requirements for the removal of ineligible numbers from the Register.

Subsection 11(1) requires the ACMA to remove, or require the contracted service provider to remove, an entry from the Register if the ACMA is satisfied that:

- (a) the number associated with the entry is not eligible to be entered on the Register; or
- (b) the person who applied to register the number associated with the entry was not eligible, under section 15 of the Act, to register the number on the Register.

Subsection 11(2) requires that before removing an entry under subsection (1), the ACMA or the contracted service provider must make reasonable efforts to inform the person identified as the relevant account-holder that the entry is to be removed from the Register.

Section 12 Handling of complaints when the Do Not Call Register is kept by a contracted service provider

Subsection 12(1) states that section 12 applies if the Register is kept by a contracted service provider.

Subsection 12(2) requires the contracted service provider to deal with complaints and enquiries about the administration and operation of the Register.

Subsection 12(3) requires the contracted service provider to refer to the ACMA any complaints about a breach of the Act, any regulations made under the Act and any code made, or standard registered, under the *Telecommunications Act 1997* that relates to the Register.