



Spam Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 18 March 2021

David Hurley
Governor-General

By His Excellency's Command

Paul Fletcher
Minister for Communications, Urban Infrastructure, Cities and the Arts

Contents

Part 1—Preliminary	1
1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Schedules	1
5 Definitions	1
Part 2—Commercial electronic messages	3
6 Messages that are not commercial electronic messages	3
Part 3—Rules about sending commercial electronic messages	4
7 Conditions for electronic address for receiving unsubscribe message	4
Part 4—Application and transitional provisions	5
8 Electronic messages sent before, on or after 1 April 2021	5
Schedule 1—Repeals	6
<i>Spam Regulations 2004</i>	6

Part 1—Preliminary

1 Name

This instrument is the *Spam Regulations 2021*.

2 Commencement

- (1) Each provision of this instrument 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
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 April 2021.	1 April 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Spam Act 2003*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) carriage service;
- (b) commercial electronic message.

In this instrument:

Act means the *Spam Act 2003*.

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

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

Section 5

premium service means a premium service within the meaning of the *Telecommunications Regulations 2021*, other than a service mentioned in subparagraph 9(2)(b)(ii) of that instrument.

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

unsubscribe message has the meaning given by subsection 18(9) of the Act.

Part 2—Commercial electronic messages

6 Messages that are not commercial electronic messages

For the purposes of subsection 6(7) of the Act, a fax is not a *commercial electronic message* for the purposes of the *Spam Act 2003*.

Part 3—Rules about sending commercial electronic messages

7 Conditions for electronic address for receiving unsubscribe message

- (1) For the purposes of paragraph 18(1)(g) of the Act, this section specifies the conditions to be complied with by an electronic address set out in a commercial electronic message as the electronic address to be used to send an unsubscribe message.

Premium service

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

Usual cost

- (3) The electronic address must not cost more to use 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.

Fees and charges

- (4) Subject to subsection (5), the use of the electronic address must not require the recipient of the commercial electronic message to pay a fee or other charge to the sender of the message or a related person.
- (5) If the sender of the commercial electronic message is also a carrier or a carriage service provider, subsection (4) does not apply to a fee or charge ordinarily imposed, for the use of carriage services, by the sender:
 - (a) in the capacity of carrier or carriage service provider; and
 - (b) on a monthly or other periodic basis.

Personal information and accounts

- (6) The use of the electronic address must not require the recipient of the commercial electronic message to:
 - (a) provide personal information (within the meaning of the *Privacy Act 1988*) other than the electronic address to which the commercial electronic message was sent; or
 - (b) log in to an existing account, or create a new account, with:
 - (i) the person who sent the commercial electronic message or caused the message to be sent; or
 - (ii) the individual or organisation who authorised the sending of the commercial electronic message.

Part 4—Application and transitional provisions

8 Electronic messages sent before, on or after 1 April 2021

- (1) This instrument applies in relation to an electronic message sent on or after 1 April 2021.
- (2) Despite the repeal of the *Spam Regulations 2004* by Schedule 1 to this instrument, the *Spam Regulations 2004* continue to apply, in relation to an electronic message sent before 1 April 2021, as if that repeal had not happened.

Schedule 1—Repeals

Spam Regulations 2004

1 The whole of the instrument

Repeal the instrument.