

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Do Not Call Register Act 2006

Do Not Call Register (Access Fees) Amendment Determination 2021 (No. 1)

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Do Not Call Register (Access Fees) Amendment Determination 2021 (No. 1)* (**the Amending Determination**) under subsection 21(1) of the *Do Not Call Register Act 2006* (**the Act**) and subsection 33(3) of the *Acts Interpretation Act 1901* (**the AIA**).

Purpose and operation of the instrument

Under subsection 21(1) of the Act, the ACMA may make a determination about the fees payable by ‘access seekers’ for the provision of ‘list washing’¹ services or the refunds of fees for those services. Under subsection 21(2) of the Act, the ACMA may make a determination that also makes provision for any exemptions from fees payable. The fees must not amount to taxation and are payable to the ACMA on behalf of the Commonwealth.

The Do Not Call Register (Access Fees) Determination 2017 (**the Determination**) was made under subsection 21(1) of the Act. The purpose of the Amending Determination is to amend the Determination to set out the new fees payable for services provided under subsection 19(2) of the Act.

Subsection 33(3) of the AIA relevantly provides that where an Act confers a power to make a legislative instrument, such as subsection 21(1) of the Act, 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 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 telephone 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 by registering their home or mobile telephone numbers that are primarily used for private or domestic purposes. Emergency service numbers, and numbers exclusively used by government bodies or to transmit faxes are also eligible for inclusion on the Do Not Call Register.

It may be unlawful 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 unlawful under section 12B of the Act to send a marketing fax to a number on the Do Not Call Register. Among other things, the ACMA may seek civil penalties regarding contraventions of subsections 11(3) and 12B(3) of the Act.

To assist telemarketers or fax marketers to avoid contravening subsections 11(3) and 12B(3) of the Act, section 19 of the Act allows for ‘access-seekers’ 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.

Section 21 of the Act empowers the ACMA to determine subscription fees for ‘washing’ services provided to access-seekers. As a non-corporate Commonwealth entity (as defined under the *Public Governance, Performance and Accountability Act 2013*), the ACMA is bound by the [Australian Government Charging Framework](#), which requires the ACMA to apply the [Australian Government Cost Recovery Guidelines](#) (the **CRGs**) to regulatory charging activities.

¹ Washing is a term used to describe the process under subsection 19(2) of the Act by which industry ‘access-seekers’ submit lists of Australian numbers to the ACMA or the contracted service provider to check if they are registered on the Do Not Call Register (and therefore should be excluded from telemarketing activity).

Consistent with the cost recovery principles and requirements set out in the CRGs, the Amending Determination increases the fees set out in Part 2 of the *Do Not Call Register (Access Fees) Determination 2017 (the Determination)* to avoid a shortfall in costs recovered by the Australian Government for the operation of the Do Not Call Register. These access fees were last increased in 2017. A description of each provision of the Amending Determination is set out in the notes at **Attachment A**.

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

Documents incorporated by reference

The Amending Determination does not incorporate any document by reference.

Consultation

Before the Amending Determination was made, ACMA undertook consultation in accordance with section 17 of the *Legislation Act 2003*.

The ACMA undertook a public consultation process from 30 July until 20 August 2021, publishing a draft of the Amending Determination and the draft Cost Recovery Implementation Statement for the Do Not Call Register on the ACMA's website.

The ACMA also contacted the Association for Data-driven Marketing and Advertising, 662 active users of the Do Not Call Register and 1,063 other telemarketing stakeholders to invite comment on the draft Amending Determination and the draft Cost Recovery Implementation Statement.

The ACMA received two submissions to the consultation.

Neither submission supported the proposed fee increase or its proposed implementation on 1 October 2021, however the cost recovery methodology used to establish the 11% increase was not contested. The ACMA considered all relevant issues raised by the two submissions when finalising the instrument.

Regulatory impact assessment

The Office of Best Practice Regulation has determined that the regulatory change effected by the Amending Determination is minor or machinery in nature and has therefore verified that a Regulatory Impact Statement is not required (Exemption reference ID: 44234).

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 with human rights 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 Amending Determination has been made by the ACMA to increase the amount charged to check (or 'wash') lists of telephone and fax numbers against the Do Not Call Register under the Act.

Human rights implications

The ACMA has assessed whether the Amending 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 Amending Determination and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Amending Determination does not engage any of those rights or freedoms.

Conclusion

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

Notes to the *Do Not Call Register (Access Fees) Amendment Determination 2021 (No.1)*

Section 1 Name

This section provides for the instrument to be cited as the *Do Not Call Register (Access Fees) Amendment Determination 2021 (No.1)*.

Section 2 Commencement

This section provides for the instrument to commence on 1 October 2021.

Section 3 Authority

This section identifies the provision of the Act that authorises the making of the instrument, namely subsection 21(1) of the Act.

Section 4 Amendments

This section provides that the instrument specified in Schedule 1, namely the *Do Not Call Register (Access Fees) Determination 2017 (the Determination)*, is amended as set out in that Schedule.

Schedule 1 – Amendments

Item 1

Item 1 of this schedule repeals the table at subsection 7(1) of the Determination and substitutes it with a new table of the fees for the provision of ‘list washing’ services.

The subsection provides for 8 subscription types (A to H) with fees varying according to the maximum quantity of numbers that can be submitted for ‘washing’ against the Do Not Call Register. The model allows for incremental quantity discounts; that is, as the quantity per subscription type increases, the unit purchasing cost declines incrementally. Columns 1 and 2 retain the same subscription structure as previously applied under the Determination. The fees set out at Column 3 represent an 11% increase from the fees previously stipulated in the Determination.

Item 2

Item 2 of this schedule repeals the two examples at subsection 7(3) of the Determination and substitutes two new examples which refer to the new fee amounts for subscription types C and D which have been introduced by the Amending Determination.