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HOUSE OF REPRESENTATIVES

Presented and read a first time

Do Not Call Register Bill 2006

No. , 2006

(Communications, Information Technology and the Arts)

**A Bill for an Act to establish a Do Not Call
Register, and for other purposes**

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1 **A Bill for an Act to establish a Do Not Call**
2 **Register, and for other purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Introduction**
5

6 **1 Short title**

7 This Act may be cited as the *Do Not Call Register Act 2006*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

Section 2

column 2 of the table. Any other statement in column 2 has effect according to its terms.

1
2
3

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Sections 3 to 9	The day on which this Act receives the Royal Assent.	
3. Part 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
4. Part 3	The day on which this Act receives the Royal Assent.	
5. Parts 4 and 5	At the same time as the provision(s) covered by table item 3.	
6. Sections 39 and 40	At the same time as the provision(s) covered by table item 3.	
7. Section 41	The day on which this Act receives the Royal Assent.	
8. Sections 42 to 45	At the same time as the provision(s) covered by table item 3.	
9. Section 46	The day on which this Act receives the Royal Assent.	
10. Schedules 1, 2 and 3	At the same time as the provision(s) covered by table item 3.	

4
5
6

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- 1 (2) Column 3 of the table contains additional information that is not
2 part of this Act. Information in this column may be added to or
3 edited in any published version of this Act.

4 **3 Simplified outline**

5 The following is a simplified outline of this Act:

- 6
 - Unsolicited telemarketing calls must not be made to a number
7 registered on the Do Not Call Register.
 - The main remedies for breaches of this Act are civil penalties
8 and injunctions.
9

10 Note: The *Telecommunications Act 1997* contains additional provisions
11 about telemarketing calls. Those provisions include Part 6 (industry
12 codes and standards), Part 26 (investigations), Part 27
13 (information-gathering powers) and Part 31A (enforceable
14 undertakings).

15 **4 Definitions**

16 In this Act:

17 **account** includes:

- 18 (a) a free account; and
19 (b) a pre-paid account; and
20 (c) anything that may reasonably be regarded as the equivalent
21 of an account.

22 **ACMA** means the Australian Communications and Media
23 Authority.

24 **acquire**, when used in relation to goods or services, has the same
25 meaning as in the *Trade Practices Act 1974*.

26 **agency** includes:

- 27 (a) an armed force; and
28 (b) a police force.

29 **Australia**, when used in a geographical sense, includes the eligible
30 Territories.

- 1 **Australian number** means a number that is:
2 (a) specified in the numbering plan referred to in section 455 of
3 the *Telecommunications Act 1997*; and
4 (b) for use in connection with the supply of carriage services to
5 the public in Australia (within the meaning of that section).
- 6 **authorise**, when used in relation to the making of a telemarketing
7 call, has a meaning affected by clause 6 of Schedule 1.
- 8 **authorised officer** means:
9 (a) the Chair of the ACMA; or
10 (b) a member of the staff of the ACMA appointed under clause 8
11 of Schedule 3.
- 12 **business** includes a venture or concern in trade or commerce,
13 whether or not conducted on a regular, repetitive or continuous
14 basis.
- 15 **candidate** means a person who has been nominated as a candidate
16 under:
17 (a) the *Commonwealth Electoral Act 1918*; or
18 (b) a law of a State or Territory that deals with electoral matters.
- 19 **carriage service** has the same meaning as in the
20 *Telecommunications Act 1997*.
- 21 **cause** has a meaning affected by subsection 11(9).
- 22 **civil contravention** means a contravention of a civil penalty
23 provision.
- 24 **civil penalty order** means an order under subsection 24(1).
- 25 **civil penalty provision** means any of the following provisions:
26 (a) subsection 11(1);
27 (b) subsection 11(7);
28 (c) subsection 12(1);
29 (d) subsection 12(2);
30 (e) a provision of the regulations that is declared to be a civil
31 penalty provision in accordance with paragraph 44(2)(c).

- 1 **consent**, when used in relation to the making of a telemarketing
2 call, has the meaning given by Schedule 2.
- 3 **contracted service provider** means the person (if any) who keeps
4 the Do Not Call Register as mentioned in paragraph 13(1)(b).
- 5 **data processing device** has the same meaning as in the
6 *Telecommunications Act 1997*.
- 7 **dealing with**, in relation to a telemarketing call, includes retrieving
8 the call from a voicemail system or similar system.
- 9 **designated telemarketing call** has the meaning given by
10 Schedule 1.
- 11 **director** includes a member of the governing body of an
12 organisation.
- 13 **Do Not Call Register** means the register kept under section 13.
- 14 **educational institution** includes:
15 (a) a pre-school; and
16 (b) a school; and
17 (c) a college; and
18 (d) a university.
- 19 **eligible Territory** means:
20 (a) the Territory of Christmas Island; or
21 (b) the Territory of Cocos (Keeling) Islands; or
22 (c) an external Territory prescribed for the purposes of section 8.
- 23 **employee** has a meaning affected by clause 7 of Schedule 1.
- 24 **employer** has a meaning affected by clause 7 of Schedule 1.
- 25 **evidential burden**, in relation to a matter, means the burden of
26 adducing or pointing to evidence that suggests a reasonable
27 possibility that the matter exists or does not exist.
- 28 **Federal Court** means the Federal Court of Australia.
- 29 **goods** has the same meaning as in the *Trade Practices Act 1974*.

- 1 **government body** means:
- 2 (a) a department of the Commonwealth, a State or a Territory; or
- 3 (b) an agency, authority or instrumentality of the
- 4 Commonwealth, a State or a Territory; or
- 5 (c) a department of the government of a foreign country; or
- 6 (d) an agency, authority or instrumentality of the government of
- 7 a foreign country; or
- 8 (e) a department of the government of a part of a foreign
- 9 country; or
- 10 (f) an agency, authority or instrumentality of the government of
- 11 a part of a foreign country.
- 12 **infringement notice** means an infringement notice under clause 2
- 13 of Schedule 3.
- 14 **international convention** means:
- 15 (a) a convention to which Australia is a party; or
- 16 (b) an agreement between Australia and a foreign country.
- 17 **investment** means any mode of application of money or other
- 18 property for the purpose of gaining a return (whether by way of
- 19 income, capital gain or any other form of return).
- 20 **make** includes attempt to make.
- 21 **mistake** means reasonable mistake of fact.
- 22 **nominee** has the meaning given by section 39.
- 23 **organisation** includes:
- 24 (a) a body corporate; and
- 25 (b) a partnership; and
- 26 (c) a government body; and
- 27 (d) a court or tribunal; and
- 28 (e) an unincorporated body or association.
- 29 Express references in this Act to organisations do not imply that
- 30 references in this Act to persons do not include bodies politic or
- 31 corporate.
- 32 Note: Paragraph 22(1)(a) of the *Acts Interpretation Act 1901* provides that
- 33 **person** includes a body politic or corporate as well as an individual.

1 **penalty unit** has the meaning given by section 4AA of the *Crimes*
2 *Act 1914*.

3 **person** includes a partnership.

4 Note: For treatment of partnerships, see section 585 of the
5 *Telecommunications Act 1997*.

6 **publish** includes:

- 7 (a) publish on the Internet; and
8 (b) publish to the public or a section of the public.

9 **registered political party** means a political party, or a branch or
10 division of a political party, that is registered under:

- 11 (a) the *Commonwealth Electoral Act 1918*; or
12 (b) a law of a State or Territory that deals with electoral matters.

13 **relevant telephone account-holder**, in relation to a telephone
14 number, means:

- 15 (a) if an individual or organisation is solely responsible for the
16 relevant telephone account—the individual or organisation;
17 or
18 (b) if 2 or more individuals and/or organisations are jointly
19 responsible for the relevant telephone account—any of those
20 individuals or organisations.

21 **services** has the same meaning as in the *Trade Practices Act 1974*.

22 **supply**:

- 23 (a) when used in relation to goods or services—has the same
24 meaning as in the *Trade Practices Act 1974*; or
25 (b) when used in relation to land—includes transfer; or
26 (c) when used in relation to an interest in land—includes transfer
27 or create.

28 **telemarketing call** has the meaning given by section 5.

29 **voice call** means:

- 30 (a) a voice call within the ordinary meaning of that expression;
31 or
32 (b) a call that involves a recorded or synthetic voice; or

1 (c) if a call covered by paragraph (a) or (b) is not practical for a
 2 particular recipient with a disability (for example, because
 3 the recipient has a hearing impairment)—a call that is
 4 equivalent to a call covered by either of those paragraphs;
 5 whether or not the recipient responds by way of pressing buttons
 6 on a telephone handset or similar thing.

7 **5 Telemarketing calls**

8 *Basic definition*

- 9 (1) For the purposes of this Act, a **telemarketing call** is a voice call to
 10 a telephone number, where, having regard to:
- 11 (a) the content of the call; and
 - 12 (b) the presentational aspects of the call; and
 - 13 (c) the content that can be obtained using the telephone numbers,
 14 URLs or contact information (if any) mentioned in the call;
 15 and
 - 16 (d) if the telephone number from which the call is made is
 17 disclosed to the recipient (whether by calling line
 18 identification or otherwise)—the content (if any) that can be
 19 obtained by calling that telephone number;
- 20 it would be concluded that the purpose, or one of the purposes, of
 21 the call is:
- 22 (e) to offer to supply goods or services; or
 - 23 (f) to advertise or promote goods or services; or
 - 24 (g) to advertise or promote a supplier, or prospective supplier, of
 25 goods or services; or
 - 26 (h) to offer to supply land or an interest in land; or
 - 27 (i) to advertise or promote land or an interest in land; or
 - 28 (j) to advertise or promote a supplier, or prospective supplier, of
 29 land or an interest in land; or
 - 30 (k) to offer to provide a business opportunity or investment
 31 opportunity; or
 - 32 (l) to advertise or promote a business opportunity or investment
 33 opportunity; or
 - 34 (m) to advertise or promote a provider, or prospective provider,
 35 of a business opportunity or investment opportunity; or

- 1 (n) to solicit donations; or
2 (o) a purpose specified in the regulations.
- 3 (2) For the purposes of paragraphs (1)(e) to (m), it is immaterial
4 whether the goods, services, land, interest or opportunity exists.
- 5 (3) For the purposes of paragraphs (1)(e) to (m), it is immaterial
6 whether it is lawful to acquire the goods, services, land or interest
7 or take up the opportunity.
- 8 (4) Either of the following:
9 (a) the supplier or prospective supplier mentioned in
10 paragraph (1)(g) or (j);
11 (b) the provider or prospective provider mentioned in
12 paragraph (1)(m);
13 may be the individual or organisation who made the call or
14 authorised the making of the call.
- 15 (5) Paragraphs (1)(e) to (o) are to be read independently of each other.
- 16 (6) Subsection (1) has effect subject to subsection (7).
- 17 *Excluded calls—regulations*
- 18 (7) The regulations may provide that a specified kind of voice call is
19 not a *telemarketing call* for the purposes of this Act.

20 **6 Continuity of partnerships**

21 For the purposes of this Act, a change in the composition of a
22 partnership does not affect the continuity of the partnership.

23 **7 Crown to be bound**

- 24 (1) This Act binds the Crown in each of its capacities.
- 25 (2) This Act does not make the Crown liable to a pecuniary penalty or
26 to be prosecuted for an offence.
- 27 (3) The protection in subsection (2) does not apply to an authority of
28 the Crown.

1 **8 Extension to external Territories**

2 This Act extends to:

- 3 (a) the Territory of Christmas Island; and
4 (b) the Territory of Cocos (Keeling) Islands; and
5 (c) such other external Territories (if any) as are prescribed.

6 **9 Extra-territorial application**

7 Unless the contrary intention appears, this Act extends to acts,
8 omissions, matters and things outside Australia.

1

Part 2—Rules about making telemarketing calls

2

3

10 Simplified outline

4

5

The following is a simplified outline of this Part:

6

7

- Unsolicited telemarketing calls must not be made to a number registered on the Do Not Call Register.
- Agreements for the making of telemarketing calls must require compliance with this Act.

8

9

11 Unsolicited telemarketing calls must not be made to a number registered on the Do Not Call Register

10

11

12

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15

16

- (1) A person must not make, or cause to be made, a telemarketing call to an Australian number if:
- (a) the number is registered on the Do Not Call Register; and
 - (b) the call is not a designated telemarketing call.

Note: For *designated telemarketing call*, see Schedule 1.

17

18

19

20

- (2) Subsection (1) does not apply if:
- (a) the relevant telephone account-holder; or
 - (b) a nominee of the relevant telephone account-holder; consented to the making of the call.

Note 1: For the meaning of *consent*, see Schedule 2.

Note 2: For the meaning of *nominee*, see section 39.

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- (3) Subsection (1) does not apply if:
- (a) the number was included on a list that was submitted by the person under subsection 19(1); and
 - (b) during the 30-day period ending at the end of the day on which the call was made:
 - (i) the person received information under subparagraph 19(2)(d)(i) in response to the submission of the list, but

- 1 that information did not state that the number was
- 2 registered on the Do Not Call Register; or
- 3 (ii) the person was informed under subparagraph
- 4 19(2)(d)(ii), in response to the submission of the list,
- 5 that the number was not registered on the Do Not Call
- 6 Register; or
- 7 (iii) under subsection 19(3), in response to the submission of
- 8 the list, the person was given a list that included the
- 9 number.

10 For the purposes of this subsection, a list may consist of a single

11 telephone number.

12 Note: Section 19 deals with access to the Do Not Call Register.

- 13 (4) Subsection (1) does not apply if the person made the call, or caused
- 14 the call to be made, by mistake.
- 15 (5) Subsection (1) does not apply if the person took reasonable
- 16 precautions, and exercised due diligence, to avoid the
- 17 contravention.
- 18 (6) A person who wishes to rely on subsection (2), (3), (4) or (5) bears
- 19 an evidential burden in relation to that matter.

20 *Ancillary contraventions*

- 21 (7) A person must not:
 - 22 (a) aid, abet, counsel or procure a contravention of
 - 23 subsection (1); or
 - 24 (b) induce, whether by threats or promises or otherwise, a
 - 25 contravention of subsection (1); or
 - 26 (c) be in any way, directly or indirectly, knowingly concerned in,
 - 27 or party to, a contravention of subsection (1); or
 - 28 (d) conspire with others to effect a contravention of
 - 29 subsection (1).

30 *Civil penalty provisions*

- 31 (8) Subsections (1) and (7) are ***civil penalty provisions***.

32 Note: Part 4 provides for pecuniary penalties for breaches of civil penalty

33 provisions.

Extended meaning of cause

- (9) For the purposes of this section, if:
- (a) a person (the *first person*) enters into a contract or arrangement, or arrives at an understanding, with another person; and
 - (b) under the contract, arrangement or understanding, the other person undertakes to make, or to cause any or all of the employees or agents of the other person to make, telemarketing calls; and
 - (c) the other person, or an employee or agent of the other person, gives effect to the contract, arrangement or understanding by making a telemarketing call;
- the first person is taken to have *caused* the telemarketing call to be made.
- (10) Paragraph (9)(a) applies to contracts or arrangements entered into, or understandings arrived at, before, at or after the commencement of this section.

12 Agreements for the making of telemarketing calls must require compliance with this Act

- (1) A person (the *first person*) must not enter into a contract or arrangement, or arrive at an understanding, with another person, if:
- (a) under the contract, arrangement or understanding, the other person undertakes to:
 - (i) make telemarketing calls; or
 - (ii) cause any or all of the employees or agents of the other person to make telemarketing calls; and
 - (b) there is a reasonable likelihood that some or all of those calls will be made to telephone numbers that, under section 14, are eligible to be entered on the Do Not Call Register; and
 - (c) the contract, arrangement or understanding does not contain an express provision to the effect that the other person will:
 - (i) in any case—comply with this Act; and
 - (ii) if subparagraph (a)(ii) applies—take all reasonable steps to ensure that the employees and agents of the other person comply with this Act;

1 in relation to the making of telemarketing calls covered by
2 the contract, arrangement or understanding.

3 *Ancillary contraventions*

- 4 (2) A person must not:
- 5 (a) aid, abet, counsel or procure a contravention of
 - 6 subsection (1); or
 - 7 (b) induce, whether by threats or promises or otherwise, a
 - 8 contravention of subsection (1); or
 - 9 (c) be in any way, directly or indirectly, knowingly concerned in,
 - 10 or party to, a contravention of subsection (1); or
 - 11 (d) conspire with others to effect a contravention of
 - 12 subsection (1).

13 *Civil penalty provisions*

- 14 (3) Subsections (1) and (2) are ***civil penalty provisions***.

15 Note: Part 4 provides for pecuniary penalties for breaches of civil penalty
16 provisions.

17 *Validity of contracts, arrangements or understandings*

- 18 (4) A failure to comply with subsection (1) does not affect the validity
19 of any contract, arrangement or understanding.

1

2 Part 3—Do Not Call Register

3

4 13 Do Not Call Register

5

(1) The ACMA must:

6

(a) keep; or

7

(b) arrange for another person (the *contracted service provider*)

8

to keep, on behalf of the ACMA;

9

a register of telephone numbers for the purposes of this Act.

10

(2) The register is to be known as the Do Not Call Register.

11

(3) The register is to be kept in electronic form.

12

(4) The register is not a legislative instrument.

13

(5) The ACMA must begin to comply with subsection (1) as soon as

14

practicable after the commencement of this section.

15

(6) For the purposes of the *Privacy Act 1988*, the primary purpose of

16

the Do Not Call Register is to facilitate the prohibition, under

17

section 11, of unsolicited telemarketing calls (other than designated

18

telemarketing calls).

19 14 Eligibility for registration

20

A telephone number is eligible to be entered on the Do Not Call

21

Register if:

22

(a) it is an Australian number; and

23

(b) it is used or maintained exclusively or primarily for private or

24

domestic purposes; and

25

(c) it is not used or maintained exclusively for transmitting

26

and/or receiving faxes.

27 15 Applications for registration

28

An application for a telephone number to be entered on the Do Not

29

Call Register:

- 1 (a) may be made by:
2 (i) the relevant telephone account-holder; or
3 (ii) a nominee of the relevant telephone account-holder; and
4 (b) is to be made to:
5 (i) if the Do Not Call Register is kept by the ACMA—the
6 ACMA; or
7 (ii) if the Do Not Call Register is kept by the contracted
8 service provider—the contracted service provider on
9 behalf of the ACMA; and
10 (c) is to be in the applicable form (if any) specified in a
11 determination under subsection 18(1); and
12 (d) is to be made in the applicable manner (if any) specified in a
13 determination under subsection 18(1).

14 Note: For the meaning of *nominee*, see section 39.

15 **16 Registration**

- 16 If:
17 (a) an application is made for a telephone number to be entered
18 on the Do Not Call Register; and
19 (b) the applicant satisfies:
20 (i) if the Do Not Call Register is kept by the ACMA—the
21 ACMA; or
22 (ii) if the Do Not Call Register is kept by the contracted
23 service provider—the contracted service provider on
24 behalf of the ACMA;
25 that the number is eligible to be entered on the Do Not Call
26 Register;
27 then:
28 (c) if the Do Not Call Register is kept by the ACMA—the
29 ACMA; or
30 (d) if the Do Not Call Register is kept by the contracted service
31 provider—the contracted service provider on behalf of the
32 ACMA;
33 must enter the number on the Do Not Call Register.

17 Duration of registration

- 1
2 (1) The registration of a telephone number on the Do Not Call
3 Register:
4 (a) takes effect when it is entered on the Do Not Call Register;
5 and
6 (b) remains in force for 3 years, unless sooner removed from the
7 Do Not Call Register in accordance with a determination
8 under subsection 18(1).
- 9 (2) If the registration of a telephone number on the Do Not Call
10 Register ceases to be in force, this Act does not prevent the number
11 from being re-registered on the Do Not Call Register.
- 12 (3) If a telephone number is removed from the Do Not Call Register,
13 this Act does not prevent the number from being re-registered on
14 the Do Not Call Register.

18 Administration of the Do Not Call Register—determinations

- 15
16 (1) The ACMA may make a determination that makes provision for
17 and in relation to any or all of the following:
18 (a) the form of applications for telephone numbers to be entered
19 on the Do Not Call Register;
20 (b) the manner in which such applications are to be made;
21 (c) the manner in which entries are to be made on the Do Not
22 Call Register;
23 (d) the correction of entries in the Do Not Call Register;
24 (e) the removal of entries from the Do Not Call Register;
25 (f) any other matter relating to the administration or operation of
26 the Do Not Call Register.
- 27 (2) A determination under subsection (1) is a legislative instrument.
- 28 (3) A determination under subsection (1) is to be an instrument of a
29 legislative character.

19 Access to the Do Not Call Register

- 30
31 (1) A person (the *access-seeker*) who wishes to access the Do Not Call
32 Register may submit a list of telephone numbers to:

Section 20

- 1 (a) if the Do Not Call Register is kept by the ACMA—the
 2 ACMA; or
 3 (b) if the Do Not Call Register is kept by the contracted service
 4 provider—the contracted service provider on behalf of the
 5 ACMA.
 6 For this purpose, a list may consist of a single telephone number.
- 7 (2) If the access-seeker has paid the applicable fee (if any) determined
 8 under subsection 21(1), then:
 9 (a) if the Do Not Call Register is kept by the ACMA—the
 10 ACMA; or
 11 (b) if the Do Not Call Register is kept by the contracted service
 12 provider—the contracted service provider on behalf of the
 13 ACMA;
 14 must:
 15 (c) check the telephone numbers on the access-seeker's list
 16 against the telephone numbers registered on the Do Not Call
 17 Register; and
 18 (d) either:
 19 (i) inform the access-seeker which numbers (if any) on the
 20 access-seeker's list are registered on the Do Not Call
 21 Register; or
 22 (ii) inform the access-seeker which numbers (if any) on the
 23 access-seeker's list are not registered on the Do Not
 24 Call Register.
- 25 (3) The ACMA, or the contracted service provider, as the case
 26 requires, may comply with subparagraph (2)(d)(ii) by returning the
 27 access-seeker's list, modified by the deletion of the numbers (if
 28 any) registered on the Do Not Call Register.
- 29 (4) A submission under subsection (1) is to be made in the applicable
 30 manner (if any) specified in a determination under subsection
 31 20(1).

20 Access—determinations

- 33 (1) The ACMA may make a determination that makes provision for
 34 and in relation to any or all of the following:

- 1 (a) the manner in which a submission under subsection 19(1) is
2 to be made;
- 3 (b) the manner in which information under paragraph 19(2)(d) is
4 to be given;
- 5 (c) the manner in which a list is to be returned under subsection
6 19(3);
- 7 (d) any other matter relating to access to the Do Not Call
8 Register.

9 *Determinations*

- 10 (2) A determination under subsection (1) is a legislative instrument.
- 11 (3) A determination under subsection (1) is to be an instrument of a
12 legislative character.

13 **21 Access—fees**

- 14 (1) The ACMA may make a determination that makes provision for
15 and in relation to either or both of the following:
- 16 (a) fees payable for services provided under subsection 19(2) or
17 (3);
- 18 (b) refunds of fees for those services.

19 *Exemptions*

- 20 (2) The ACMA may make a determination that makes provision for
21 and in relation to exemptions from fees for services provided under
22 subsection 19(2) or (3).
- 23 (3) The Minister may make a determination that makes provision for
24 and in relation to exemptions from fees for services provided under
25 subsection 19(2) or (3).
- 26 (4) If one or more determinations are in force under subsection (3), a
27 determination under subsection (2) has no effect except to the
28 extent to which it makes provision for and in relation to
29 exemptions that are in addition to exemptions dealt with by the
30 determinations under subsection (3).

1 *Other matters*

2 (5) A fee must not be such as to amount to taxation.

3 (6) A fee is payable to the ACMA on behalf of the Commonwealth.

4 (7) Section 60 of the *Australian Communications and Media Authority*
5 *Act 2005* does not apply in relation to services provided under
6 subsection 19(2) or (3).7 Note: Section 60 of the *Australian Communications and Media Authority*
8 *Act 2005* deals with charges relating to the ACMA's expenses.9 *Determinations*10 (8) A determination under subsection (1), (2) or (3) is a legislative
11 instrument.12 (9) A determination under subsection (1), (2), or (3) is to be an
13 instrument of a legislative character.14 **22 Application of the *Privacy Act 1988* to the contracted service**
15 **provider**16 (1) For the purposes of the *Privacy Act 1988*, if the Do Not Call
17 Register is kept by the contracted service provider under a contract:
18 (a) the keeping of the Do Not Call Register by the contracted
19 service provider; and
20 (b) the operation of the Do Not Call Register by the contracted
21 service provider; and
22 (c) the performance of a function, or the exercise of a power, by
23 the contracted service provider under:
24 (i) this Part; or
25 (ii) a determination under this Part;
26 is taken to be the provision of a service to the ACMA under the
27 contract.

28 (2) Subsection (1) is enacted for the avoidance of doubt.

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Part 4—Civil penalties

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23 Simplified outline

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The following is a simplified outline of this Part:

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- Pecuniary penalties are payable for contraventions of civil penalty provisions.
- Proceedings for the recovery of penalties are to be instituted in the Federal Court or the Federal Magistrates Court.

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Note: Schedule 3 sets up a system of infringement notices relating to contraventions of civil penalty provisions.

24 Civil penalty orders

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(1) If the Federal Court or the Federal Magistrates Court is satisfied that a person has contravened a civil penalty provision, the court may, on the application of the ACMA, order the person to pay to the Commonwealth a pecuniary penalty.

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(2) An order under subsection (1) is to be known as a *civil penalty order*.

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Determining pecuniary penalty

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(3) In determining the pecuniary penalty, the court must have regard to all relevant matters, including:

- (a) the nature and extent of the contravention; and
- (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
- (c) the circumstances in which the contravention took place; and
- (d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct; and

- 1 (e) if the court considers that it is appropriate to do so—whether
2 the person has previously been found by a court in a foreign
3 country to have engaged in any similar conduct.

4 *Civil enforcement of penalty*

- 5 (4) The pecuniary penalty is a civil debt payable to the
6 Commonwealth. The Commonwealth may enforce the civil penalty
7 order as if it were an order made in civil proceedings against the
8 person to recover a debt due by the person. The debt arising from
9 the order is taken to be a judgment debt.

10 **25 Maximum penalties for contravention of civil penalty provisions**

- 11 (1) The maximum penalty payable under subsection 24(1) by a person
12 in respect of a contravention of a civil penalty provision depends
13 on:
14 (a) whether the person has a prior record in relation to the civil
15 penalty provision (see subsection (2)); and
16 (b) whether the person is a body corporate; and
17 (c) whether the civil penalty provision is subsection 11(1) or (7).

18 *Prior record*

- 19 (2) If:
20 (a) on a particular day (the *first day*), the Federal Court or the
21 Federal Magistrates Court makes a civil penalty order against
22 a person in respect of a contravention of a particular civil
23 penalty provision; and
24 (b) that is the first occasion on which a court makes a civil
25 penalty order against the person in respect of a contravention
26 of the civil penalty provision;
27 then, for the purposes of determining the penalty payable under
28 subsection 24(1) by the person in respect of a contravention of the
29 civil penalty provision that occurs after the first day, the person has
30 a *prior record* in relation to the civil penalty provision.

1 *Maximum penalty payable by body corporate—no prior record*

- 2 (3) If a body corporate does not have a prior record in relation to a
3 particular civil penalty provision:
- 4 (a) the penalty payable under subsection 24(1) by the body
5 corporate in respect of a contravention of the civil penalty
6 provision must not exceed:
- 7 (i) if the civil penalty provision is subsection 11(1) or (7)—
8 100 penalty units; or
- 9 (ii) in any other case—50 penalty units; and
- 10 (b) if the Federal Court or the Federal Magistrates Court finds
11 that the body corporate has, on a particular day, committed 2
12 or more contraventions of the civil penalty provision—the
13 total of the penalties payable under subsection 24(1) by the
14 body corporate in respect of those contraventions must not
15 exceed:
- 16 (i) if the civil penalty provision is subsection 11(1) or (7)—
17 2,000 penalty units; or
- 18 (ii) in any other case—1,000 penalty units.

19 *Maximum penalty payable by a person other than a body*
20 *corporate—no prior record*

- 21 (4) If a person other than a body corporate does not have a prior record
22 in relation to a particular civil penalty provision:
- 23 (a) the penalty payable under subsection 24(1) by the person in
24 respect of a contravention of the civil penalty provision must
25 not exceed:
- 26 (i) if the civil penalty provision is subsection 11(1) or (7)—
27 20 penalty units; or
- 28 (ii) in any other case—10 penalty units; and
- 29 (b) if the Federal Court or the Federal Magistrates Court finds
30 that the person has, on a particular day, committed 2 or more
31 contraventions of the civil penalty provision—the total of the
32 penalties payable under subsection 24(1) by the person in
33 respect of those contraventions must not exceed:
- 34 (i) if the civil penalty provision is subsection 11(1) or (7)—
35 400 penalty units; or
- 36 (ii) in any other case—200 penalty units.

1 *Maximum penalty payable by body corporate—prior record*

- 2 (5) If a body corporate has a prior record in relation to a particular
3 civil penalty provision:
- 4 (a) the penalty payable under subsection 24(1) by the body
5 corporate in respect of a contravention of the civil penalty
6 provision must not exceed:
- 7 (i) if the civil penalty provision is subsection 11(1) or (7)—
8 500 penalty units; or
- 9 (ii) in any other case—250 penalty units; and
- 10 (b) if the Federal Court or the Federal Magistrates Court finds
11 that the body corporate has, on a particular day, committed 2
12 or more contraventions of the civil penalty provision—the
13 total of the penalties payable under subsection 24(1) by the
14 body corporate in respect of those contraventions must not
15 exceed:
- 16 (i) if the civil penalty provision is subsection 11(1) or (7)—
17 10,000 penalty units; or
- 18 (ii) in any other case—5,000 penalty units.

19 *Maximum penalty payable by a person other than a body*
20 *corporate—prior record*

- 21 (6) If a person other than a body corporate has a prior record in
22 relation to a particular civil penalty provision:
- 23 (a) the penalty payable under subsection 24(1) by the person in
24 respect of a contravention of the civil penalty provision must
25 not exceed:
- 26 (i) if the civil penalty provision is subsection 11(1) or (7)—
27 100 penalty units; or
- 28 (ii) in any other case—50 penalty units; and
- 29 (b) if the Federal Court or the Federal Magistrates Court finds
30 that the person has, on a particular day, committed 2 or more
31 contraventions of the civil penalty provision—the total of the
32 penalties payable under subsection 24(1) by the person in
33 respect of those contraventions must not exceed:
- 34 (i) if the civil penalty provision is subsection 11(1) or (7)—
35 2,000 penalty units; or
- 36 (ii) in any other case—1,000 penalty units.

1 26 2 or more proceedings may be heard together

2 The Federal Court or the Federal Magistrates Court may direct that
3 2 or more proceedings for civil penalty orders are to be heard
4 together.

5 27 Time limit for application for an order

6 Proceedings for a civil penalty order may be started no later than 6
7 years after the contravention.

8 28 Civil evidence and procedure rules for civil penalty orders

9 The Federal Court or the Federal Magistrates Court must apply the
10 rules of evidence and procedure for civil matters when hearing
11 proceedings for a civil penalty order.

**12 29 Criminal proceedings not to be brought for contravention of civil
13 penalty provisions**

14 Criminal proceedings do not lie against a person only because the
15 person has contravened a civil penalty provision.

16 30 Ancillary orders—compensation

17 (1) If:

18 (a) in one or more proceedings under section 24, the Federal
19 Court or the Federal Magistrates Court finds that a person
20 (the *perpetrator*) has contravened one or more civil penalty
21 provisions; and

22 (b) the court is satisfied that another person (the *victim*) has
23 suffered loss or damage as a result of any or all of those
24 contraventions;

25 the court may, on the application of the ACMA or the victim, make
26 an order that the court considers appropriate directing the
27 perpetrator to compensate the victim.

28 (2) In determining whether a person (the *victim*) has suffered loss or
29 damage as a result of one or more contraventions by another
30 person of section 11 in relation to the making of one or more

- 1 telemarketing calls, and in assessing the amount of compensation
2 payable, the court may have regard to the following:
- 3 (a) the extent to which any expenses incurred by the victim are
4 attributable to dealing with the calls;
 - 5 (b) the effect of dealing with the calls on the victim's ability to
6 carry on business or other activities;
 - 7 (c) any damage to the reputation of the victim's business that is
8 attributable to dealing with the calls;
 - 9 (d) any loss of business opportunities suffered by the victim as a
10 result of dealing with the calls;
 - 11 (e) any other matters that the court considers relevant.
- 12 (3) The Federal Court or the Federal Magistrates Court may make an
13 order under subsection (1), whether or not it makes a civil penalty
14 order.
- 15 (4) An application under subsection (1) may be made at any time
16 within 6 years after the contravention concerned.

17 **31 Ancillary orders—recovery of financial benefit**

- 18 (1) If:
- 19 (a) in one or more proceedings under section 24, the Federal
20 Court or the Federal Magistrates Court finds that a person has
21 contravened one or more civil penalty provisions; and
 - 22 (b) the court is satisfied that the person has obtained (whether
23 directly or indirectly) a financial benefit that is reasonably
24 attributable to any or all of those contraventions;
- 25 the court may, on the application of the ACMA, make an order
26 directing the person to pay to the Commonwealth an amount up to
27 the amount of the financial benefit.
- 28 (2) The Federal Court or the Federal Magistrates Court may make an
29 order under subsection (1), whether or not it makes a civil penalty
30 order.
- 31 (3) An application under subsection (1) may be made at any time
32 within 6 years after the contravention concerned.

1 **32 Schedule 3 (infringement notices)**

2 Schedule 3 has effect.

1

Part 5—Injunctions2
3**33 Simplified outline**

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The following is a simplified outline of this Part:

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- The Federal Court or the Federal Magistrates Court may grant injunctions in relation to contraventions of civil penalty provisions.

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34 Injunctions

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Restraining injunctions

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- (1) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of a civil penalty provision, the Federal Court or the Federal Magistrates Court may, on the application of the ACMA, grant an injunction:
 - (a) restraining the person from engaging in the conduct; and
 - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

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Performance injunctions

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- (2) If:
 - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of a civil penalty provision;the Federal Court or the Federal Magistrates Court may, on the application of the ACMA, grant an injunction requiring the person to do that act or thing.

1 35 Interim injunctions**2** *Grant of interim injunction*

- 3** (1) If an application is made to the Federal Court or the Federal
4 Magistrates Court for an injunction under section 34, the court
5 may, before considering the application, grant an interim injunction
6 restraining a person from engaging in conduct of a kind referred to
7 in that section.

8 *No undertakings as to damages*

- 9** (2) The Federal Court or the Federal Magistrates Court is not to
10 require an applicant for an injunction under section 34, as a
11 condition of granting an interim injunction, to give any
12 undertakings as to damages.

13 36 Discharge etc. of injunctions

14 The Federal Court or the Federal Magistrates Court may discharge
15 or vary an injunction granted by it under this Part.

16 37 Certain limits on granting injunctions not to apply**17** *Restraining injunctions*

- 18** (1) The power of the Federal Court or the Federal Magistrates Court
19 under this Part to grant an injunction restraining a person from
20 engaging in conduct of a particular kind may be exercised:
- 21** (a) if the court is satisfied that the person has engaged in conduct
22 of that kind—whether or not it appears to the court that the
23 person intends to engage again, or to continue to engage, in
24 conduct of that kind; or
- 25** (b) if it appears to the court that, if an injunction is not granted, it
26 is likely that the person will engage in conduct of that kind—
27 whether or not the person has previously engaged in conduct
28 of that kind and whether or not there is an imminent danger
29 of substantial damage to any person if the person engages in
30 conduct of that kind.

1 *Performance injunctions*

- 2 (2) The power of the Federal Court or the Federal Magistrates Court to
3 grant an injunction requiring a person to do an act or thing may be
4 exercised:
- 5 (a) if the court is satisfied that the person has refused or failed to
6 do that act or thing—whether or not it appears to the court
7 that the person intends to refuse or fail again, or to continue
8 to refuse or fail, to do that act or thing; or
- 9 (b) if it appears to the court that, if an injunction is not granted, it
10 is likely that the person will refuse or fail to do that act or
11 thing—whether or not the person has previously refused or
12 failed to do that act or thing and whether or not there is an
13 imminent danger of substantial damage to any person if the
14 person refuses or fails to do that act or thing.

15 **38 Other powers of the Federal Court or the Federal Magistrates**
16 **Court unaffected**

17 The powers conferred on the Federal Court or the Federal
18 Magistrates Court under this Part are in addition to, and not instead
19 of, any other powers of the court, whether conferred by this Act or
20 otherwise.

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Part 6—Miscellaneous

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39 Nominees

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Nomination by relevant telephone account-holder

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- (1) For the purposes of the application of this Act to a telephone number, if:

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(a) the relevant telephone account-holder has nominated an individual in relation to the number; and

(b) the nomination has not been withdrawn;

the individual is a *nominee* of the relevant telephone account-holder.

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- (2) A nomination may be made, or withdrawn, orally or in writing.

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- (3) This Act does not prevent 2 or more individuals from being nominated in relation to the same telephone number.

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Deemed nominee

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- (4) The regulations may provide that, for the purposes of the application of this Act to a telephone number, an individual is taken to be a *nominee* of the relevant telephone account-holder in the circumstances specified in the regulations.

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40 Formal warnings—breach of civil penalty provision

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The ACMA may issue a formal warning if a person contravenes a civil penalty provision.

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41 Additional ACMA functions

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The ACMA has the following functions:

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- (a) to conduct and/or co-ordinate community education programs about unsolicited telemarketing calls, in consultation with relevant industry and consumer groups and government agencies;

- 1 (b) to conduct and/or commission research into issues relating to
 2 unsolicited telemarketing calls;
 3 (c) to liaise with regulatory and other relevant bodies overseas
 4 about co-operative arrangements for the prohibition or
 5 regulation of unsolicited telemarketing calls.

6 **42 Operation of State and Territory laws**

7 This Act is not intended to exclude or limit the operation of a law
 8 of a State or Territory to the extent that the law is capable of
 9 operating concurrently with this Act.

10 **43 Implied freedom of political communication**

11 This Act does not apply to the extent (if any) that it would infringe
 12 any constitutional doctrine of implied freedom of political
 13 communication.

14 **44 Giving effect to international conventions**

- 15 (1) The regulations may make provision for and in relation to giving
 16 effect to an international convention that deals with telemarketing
 17 calls.
- 18 (2) Regulations made for the purposes of subsection (1) may:
 19 (a) vest the Federal Court or the Federal Magistrates Court with
 20 jurisdiction in a matter or matters arising under the
 21 regulations; and
 22 (b) prescribe penalties, not exceeding a fine of 50 penalty units,
 23 for offences against the regulations; and
 24 (c) declare that a specified provision of the regulations is a civil
 25 penalty provision for the purposes of this Act.

26 **45 Review of operation of Act**

- 27 (1) The Minister must cause to be conducted a review of the operation
 28 of:
 29 (a) this Act; and
 30 (b) the *Telecommunications Act 1997* to the extent to which that
 31 Act relates to this Act; and

- 1 (c) Part 6 of the *Telecommunications Act 1997* to the extent to
2 which that Part relates to telemarketing activities (within the
3 meaning of that Part).
- 4 (2) A review under subsection (1) must be conducted:
5 (a) before the end of the period of 3 years after the
6 commencement of this section; or
7 (b) as soon as practicable after the end of that 3-year period.
- 8 (3) The Minister must cause to be prepared a report of a review under
9 subsection (1).
- 10 (4) The Minister must cause copies of a report to be tabled in each
11 House of the Parliament within 15 sittings days of that House after
12 the completion of the preparation of the report.

13 **46 Regulations**

- 14 The Governor-General may make regulations prescribing matters:
15 (a) required or permitted to be prescribed by this Act; or
16 (b) necessary or convenient to be prescribed for carrying out or
17 giving effect to this Act.

1 **Schedule 1—Designated telemarketing calls**

2 Note: See section 4.
3
4

5 **1 Object**

6 The object of this Schedule is to define the expression *designated*
7 *telemarketing call*.

8 Note: Designated telemarketing calls are exempt from section 11
9 (unsolicited telemarketing calls must not be made to a number
10 registered on the Do Not Call Register).

11 **2 Government bodies, religious organisations and charities**

12 For the purposes of this Act, a telemarketing call is a *designated*
13 *telemarketing call* if:

- 14 (a) the making of the call is authorised by any of the following
15 bodies:
16 (i) a government body;
17 (ii) a religious organisation;
18 (iii) a charity or charitable institution; and
19 (b) if the call relates to goods or services—the body is the
20 supplier, or prospective supplier, of the goods or services;
21 and
22 (c) the call is not of a kind specified in the regulations.

23 **3 Political parties, independent members of parliament, candidates** 24 **etc.**

25 *Political parties*

26 (1) For the purposes of this Act, a telemarketing call is a *designated*
27 *telemarketing call* if:

- 28 (a) the making of the call is authorised by a registered political
29 party; and
30 (b) having regard to:
31 (i) the content of the call; and

- 1 (ii) the presentational aspects of the call;
 2 it would be concluded that the purpose, or one of the
 3 purposes, of the call is:
 4 (iii) to conduct fund-raising for electoral purposes; or
 5 (iv) to conduct fund-raising for political purposes; and
 6 (c) if the call relates to goods or services—the registered
 7 political party is the supplier, or prospective supplier, of the
 8 goods or services; and
 9 (d) the call is not of a kind specified in the regulations.

10 *Independent members of parliament etc.*

- 11 (2) For the purposes of this Act, a telemarketing call is a **designated**
 12 **telemarketing call** if:
 13 (a) the making of the call is authorised by a person who is a
 14 member of:
 15 (i) the Parliament of the Commonwealth; or
 16 (ii) the parliament of a State; or
 17 (iii) the Legislative Assembly for the Australian Capital
 18 Territory; or
 19 (iv) the Legislative Assembly of the Northern Territory; or
 20 (v) the Legislative Assembly of Norfolk Island; or
 21 (vi) a local governing body established by or under a law of
 22 a State or a Territory;
 23 and who is not affiliated with any registered political party;
 24 and
 25 (b) having regard to:
 26 (i) the content of the call; and
 27 (ii) the presentational aspects of the call;
 28 it would be concluded that the purpose, or one of the
 29 purposes, of the call is:
 30 (iii) to conduct fund-raising for electoral purposes; or
 31 (iv) to conduct fund-raising for political purposes; and
 32 (c) if the call relates to goods or services—the person is the
 33 supplier, or prospective supplier, of the goods or services;
 34 and
 35 (d) the call is not of a kind specified in the regulations.

1

Candidates

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(3) For the purposes of this Act, a telemarketing call is a ***designated telemarketing call*** if:

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(a) the making of the call is authorised by a person who is a candidate in an election for:

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(i) the House of Representatives; or

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(ii) the Senate; or

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(iii) a house of the parliament of a State; or

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(iv) the Legislative Assembly for the Australian Capital Territory; or

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(v) the Legislative Assembly of the Northern Territory; or

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(vi) the Legislative Assembly of Norfolk Island; or

13

(vii) a local governing body established by or under a law of a State or a Territory; and

14

15

(b) having regard to:

16

(i) the content of the call; and

17

(ii) the presentational aspects of the call;

18

it would be concluded that the purpose, or one of the purposes, of the call is:

19

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(iii) to conduct fund-raising for electoral purposes; or

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(iv) to conduct fund-raising for political purposes; and

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(c) if the call relates to goods or services—the person is the supplier, or prospective supplier, of the goods or services; and

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(d) the call is not of a kind specified in the regulations.

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4 Educational institutions

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Relevant telephone account-holder is a householder

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(1) For the purposes of this Act, a telemarketing call is a ***designated telemarketing call*** if:

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(a) the making of the call is authorised by an educational institution; and

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32

(b) the call is made to a number that is used or maintained primarily for the private or domestic purposes of the relevant

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- 1 telephone account-holder and/or members of the relevant
2 account-holder's household; and
3 (c) either or both of the following subparagraphs apply:
4 (i) the relevant telephone account-holder is, or has been,
5 enrolled as a student in that institution;
6 (ii) a member or former member of the relevant
7 account-holder's household is, or has been, enrolled as a
8 student in that institution; and
9 (d) if the call relates to goods or services—the institution is the
10 supplier, or prospective supplier, of the goods or services;
11 and
12 (e) the call is not of a kind specified in the regulations.

13 *Relevant telephone account-holder is an employer*

- 14 (2) For the purposes of this Act, a telemarketing call is a **designated**
15 **telemarketing call** if:
16 (a) the making of the call is authorised by an educational
17 institution; and
18 (b) the relevant telephone account-holder is the employer of an
19 employee; and
20 (c) the call is made to a number that is used or maintained
21 primarily for the private or domestic purposes of the
22 employee and/or members of the employee's household; and
23 (d) either or both of the following subparagraphs apply:
24 (i) the employee is, or has been, enrolled as a student in
25 that institution;
26 (ii) a member or former member of the employee's
27 household is, or has been, enrolled as a student in that
28 institution; and
29 (e) if the call relates to goods or services—the institution is the
30 supplier, or prospective supplier, of the goods or services;
31 and
32 (f) the call is not of a kind specified in the regulations.

33 Note: Clause 7 provides for an extended meaning of **employee** and
34 **employer**.

1 5 Regulations

2 The regulations may provide that a specified kind of telemarketing
3 call is a *designated telemarketing call* for the purposes of this Act.

4 6 Authorising the making of telemarketing calls**5 *Attribution of authorisation to organisation***

- 6 (1) For the purposes of this Schedule (including subclause (2)), if:
7 (a) an individual authorises the making of a telemarketing call;
8 and
9 (b) the individual does so on behalf of an organisation;
10 then:
11 (c) the organisation is taken to authorise the making of the call;
12 and
13 (d) the individual is taken not to authorise the making of the call.

14 *Self-authorisation*

- 15 (2) For the purposes of this Schedule, if:
16 (a) a telemarketing call is made by an individual or organisation;
17 and
18 (b) the making of the call is not authorised by any other
19 individual or organisation;
20 the first-mentioned individual or organisation is taken to authorise
21 the making of the call.

22 7 Extended meaning of *employee* and *employer***23 *Member of the executive body of a body corporate***

- 24 (1) For the purposes of clause 4, if an individual is a member of the
25 executive body (whether described as the board of directors or
26 otherwise) of a body corporate, the individual is taken to be an
27 employee of the body corporate.

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Contractor

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- (2) For the purposes of clause 4, if an individual works under a contract that is wholly or principally for the labour of the individual, the individual is taken to be an employee of the other party to the contract.

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Member of parliament

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- (3) For the purposes of clause 4, if an individual is a member of the Parliament of the Commonwealth, the individual is taken to be an employee of the Commonwealth.

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- (4) For the purposes of clause 4, if an individual is a member of the parliament of a State, the individual is taken to be an employee of the State.

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- (5) For the purposes of clause 4, if an individual is a member of the Legislative Assembly for the Australian Capital Territory, the individual is taken to be an employee of the Australian Capital Territory.

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- (6) For the purposes of clause 4, if an individual is a member of the Legislative Assembly of the Northern Territory, the individual is taken to be an employee of the Northern Territory.

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- (7) For the purposes of clause 4, if an individual is a member of the Legislative Assembly of Norfolk Island, the individual is taken to be an employee of Norfolk Island.

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Member of local governing body

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- (8) For the purposes of clause 4, if an individual is a member of a local governing body established by or under a law of a State or Territory, the individual is taken to be an employee of that body.

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27

Officeholder etc.

28

- (9) For the purposes of clause 4, if an individual:

29

- (a) holds, or performs the duties of, an appointment, office or position under the Constitution or under a law of the Commonwealth, of a State or of a Territory; or

30

31

Clause 7

1 (b) is otherwise in the service of the Commonwealth, of a State
2 or of a Territory (including service as a member of the
3 Defence Force or as a member of a police force);
4 the individual is taken to be an employee of the Commonwealth,
5 the State or the Territory, as the case requires.

1
2 **Schedule 2—Consent**

3 Note: See section 4.
4
5

6 **1 Object**

7 The object of this Schedule is to define the expression *consent*
8 when used in relation to the making of a telemarketing call.

9 Note: The concept of consent is relevant to section 11 (unsolicited
10 telemarketing calls must not be made to a number registered on the Do
11 Not Call Register).

12 **2 Basic definition**

13 For the purposes of this Act, *consent* means:

- 14 (a) express consent; or
15 (b) consent that can reasonably be inferred from:
16 (i) the conduct; and
17 (ii) the business and other relationships;
18 of the individual or organisation concerned.

19 **3 Duration of express consent**

20 For the purposes of this Act, if:

- 21 (a) express consent is given; and
22 (b) the consent is not expressed to be for a specified period or for
23 an indefinite period;

24 the consent is taken to have been withdrawn at the end of the
25 period of 3 months beginning on the day on which the consent was
26 given.

27 **4 Consent may not be inferred from the publication of a telephone
28 number**

29 For the purposes of the application of this Act to a telephone
30 number, consent of:

- 31 (a) the relevant telephone account-holder; or

1 (b) a nominee of the relevant telephone account-holder;
2 may not be inferred from the mere fact that the telephone number
3 has been published.

4 **5 Regulations about consent**

5 (1) The regulations may provide that, for the purposes of the
6 application of this Act to a telephone number, the consent of:
7 (a) the relevant telephone account-holder; or
8 (b) a nominee of the relevant telephone account-holder;
9 may not be inferred in the circumstances specified in the
10 regulations.

11 (2) The regulations may provide that, for the purposes of the
12 application of this Act to a telephone number, the consent of:
13 (a) the relevant telephone account-holder; or
14 (b) a nominee of the relevant telephone account-holder;
15 may be inferred in the circumstances specified in the regulations.

1
2 **Schedule 3—Infringement notices**

3 Note: See section 32.
4
5

6 **1 Object**

7 The object of this Schedule is to set up a system of infringement
8 notices for contraventions of civil penalty provisions as an
9 alternative to the institution of proceedings in the Federal Court or
10 the Federal Magistrates Court.

11 **2 When an infringement notice can be given**

12 (1) If an authorised officer has reasonable grounds to believe that a
13 person has, on a particular day, committed one or more
14 contraventions of a particular civil penalty provision, the
15 authorised officer may give to the person an infringement notice
16 relating to those contraventions.

17 (2) An infringement notice must be given within 12 months after the
18 day on which the civil contraventions are alleged to have taken
19 place.

20 (3) This clause does not authorise the giving of 2 or more infringement
21 notices to a person in relation to contraventions of a particular civil
22 penalty provision that allegedly occurred on the same day.

23 **3 Matters to be included in an infringement notice**

- 24 (1) An infringement notice must:
25 (a) set out the name of the person to whom the notice is given;
26 and
27 (b) set out the name of the authorised officer who gave the
28 notice; and
29 (c) either:
30 (i) set out brief details of each of the alleged civil
31 contraventions; or

- 1 (ii) be accompanied by one or more data processing devices
 2 that contain, in electronic form, brief details of each of
 3 the alleged civil contraventions; and
 4 (d) contain a statement to the effect that the matter or matters
 5 will not be dealt with by the Federal Court or the Federal
 6 Magistrates Court if the penalty specified in the notice is paid
 7 to the ACMA, on behalf of the Commonwealth, within:
 8 (i) 28 days after the notice is given; or
 9 (ii) if the ACMA allows a longer period—that longer
 10 period; and
 11 (e) give an explanation of how payment of the penalty is to be
 12 made; and
 13 (f) set out such other matters (if any) as are specified by the
 14 regulations.

15 Note: For the amount of penalty, see clause 4.

- 16 (2) For the purposes of paragraph (1)(c), the brief details must include
 17 the following information in relation to each alleged civil
 18 contravention:
 19 (a) the date of the alleged contravention;
 20 (b) the civil penalty provision that was allegedly contravened.
 21 (3) Subparagraph (1)(c)(ii) does not authorise the inclusion of
 22 information in a data processing device unless, at the time the
 23 infringement notice was given, it was reasonable to expect that the
 24 information would be readily accessible so as to be useable for
 25 subsequent reference.
 26 (4) This clause does not limit the operation of the *Electronic*
 27 *Transactions Act 1999*.

28 **4 Amount of penalty**

29 *Infringement notice given to a body corporate*

- 30 (1) The penalty to be specified in an infringement notice given to a
 31 body corporate must be a pecuniary penalty equal to the number of
 32 penalty units worked out using the table:
 33

Clause 4

Number of penalty units		
Item	In this case ...	the number of penalty units is ...
1	the notice relates to a single alleged contravention of subsection 11(1) or (7)	20
2	the notice relates to more than 1, but fewer than 50, alleged contraventions of subsection 11(1) or (7)	the number obtained by multiplying 20 by the number of alleged contraventions
3	the notice relates to 50 or more alleged contraventions of subsection 11(1) or (7)	1,000
4	the notice relates to a single alleged contravention of a civil penalty provision other than subsection 11(1) or (7)	10
5	the notice relates to more than 1, but fewer than 50, alleged contraventions of a civil penalty provision other than subsection 11(1) or (7)	the number obtained by multiplying 10 by the number of alleged contraventions
6	the notice relates to 50 or more alleged contraventions of a civil penalty provision other than subsection 11(1) or (7)	500

1 *Infringement notice given to a person other than a body corporate*

2 (2) The penalty to be specified in an infringement notice given to a
 3 person other than a body corporate must be a pecuniary penalty
 4 equal to the number of penalty units worked out using the table:
 5

Number of penalty units		
Item	In this case ...	the number of penalty units is ...
1	the notice relates to a single alleged contravention of subsection 11(1) or (7)	4

Number of penalty units		
Item	In this case ...	the number of penalty units is ...
2	the notice relates to more than 1, but fewer than 50, alleged contraventions of subsection 11(1) or (7)	the number obtained by multiplying 4 by the number of alleged contraventions
3	the notice relates to 50 or more alleged contraventions of subsection 11(1) or (7)	200
4	the notice relates to a single alleged contravention of a civil penalty provision other than subsection 11(1) or (7)	2
5	the notice relates to more than 1, but fewer than 50, alleged contraventions of a civil penalty provision other than subsection 11(1) or (7)	the number obtained by multiplying 2 by the number of alleged contraventions
6	the notice relates to 50 or more alleged contraventions of a civil penalty provision other than subsection 11(1) or (7)	100

1 **5 Withdrawal of an infringement notice**

2 (1) This clause applies if an infringement notice is given to a person.

3 (2) An authorised officer may, by written notice (the ***withdrawal***
4 ***notice***) given to the person, withdraw the infringement notice.

5 (3) To be effective, the withdrawal notice must be given to the person
6 within 28 days after the infringement notice was given.

7 *Refund of penalty if infringement notice withdrawn*

8 (4) If:

- 9 (a) the penalty specified in the infringement notice is paid; and
10 (b) the infringement notice is withdrawn after the penalty is paid;
11 the Commonwealth is liable to refund the penalty.

1 6 What happens if the penalty is paid

- 2 (1) This clause applies if:
- 3 (a) an infringement notice relating to one or more alleged civil
- 4 contraventions is given to a person; and
- 5 (b) the penalty is paid in accordance with the infringement
- 6 notice; and
- 7 (c) the infringement notice is not withdrawn.
- 8 (2) Any liability of the person for the alleged civil contraventions is
- 9 discharged.
- 10 (3) Proceedings under Part 4 may not be brought against the person for
- 11 the alleged civil contraventions.

12 7 Effect of this Schedule on civil proceedings

- 13 This Schedule does not:
- 14 (a) require an infringement notice to be given in relation to an
- 15 alleged civil contravention; or
- 16 (b) affect the liability of a person to have proceedings under
- 17 Part 4 brought against the person for an alleged civil
- 18 contravention if:
- 19 (i) the person does not comply with an infringement notice
- 20 relating to the contravention; or
- 21 (ii) an infringement notice relating to the contravention is
- 22 not given to the person; or
- 23 (iii) an infringement notice relating to the contravention is
- 24 given to the person and subsequently withdrawn; or
- 25 (c) limit the Federal Court's or the Federal Magistrates Court's
- 26 discretion to determine the amount of a penalty to be
- 27 imposed on a person who is found in proceedings under
- 28 Part 4 to have committed a civil contravention.

29 8 Appointment of authorised officer

- 30 The ACMA may, by writing, appoint a member of the staff of the
- 31 ACMA as an authorised officer for the purposes of this Schedule.

1 **9 Regulations**

2 The regulations may make further provision in relation to
3 infringement notices.
4
5