



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 46 2003–04

Spam (Consequential Amendments) Bill 2003

ISSN 1328-8091

© Copyright Commonwealth of Australia 2003

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database.

On the Internet the Department of the Parliamentary Library can be found at:

<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2003

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 46 2003–04

Spam (Consequential Amendments) Bill 2003

Brendan Bailey
Law and Bills Digest Group
7 October 2003

Contents

Purpose.....	1
Background.....	1
Main Provisions	1
Schedule 1—Amendments.....	1
<i>Telecommunications Act 1997</i>	1
<i>Australian Communication Authority Act 1997</i>	3
<i>Telecommunications Act 1997</i>	3
Concluding Comments.....	3

Spam (Consequential Amendments) Bill 2003

Date Introduced: 18 September 2003

House: House of Representatives

Portfolio: Communications, Information Technology and the Arts

Commencement: Royal Assent or, where specified, 120 days after the *Spam Act 2003* receives Royal Assent. (The 120 day deferred commencement period applies to penalty provisions to enable businesses time to align business practices with the legislative requirements.)

Purpose

The purpose of the Bill is to enable investigation, compliance and enforcement action to be undertaken by the Australian Communications Authority (ACA) and hearings by the Australian Competition and Consumer Commission to support the operation of the separate Spam Bill 2003.

Background

A detailed *Background* is provided in the accompanying Bills Digest on the Spam Bill 2003.

Main Provisions

Schedule 1—Amendments

(The amendments made by Part 1, below, of Schedule 1 commence on Royal Assent.)

Telecommunications Act 1997

Section 3 of the *Telecommunications Act 1997* (TA) specifies that one of the main objects of the TA is to provide a regulatory framework that promotes the long-term interests of end-users of carriage services or services provided by means of carriage services. A 'carriage service' means a service for carrying communications.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Item 1 amends subsection 3(2) of the TA to set out a secondary object which is to promote responsible practices in relation to the communication of commercial electronic messages.

Items 2 and 3 amend section 5 of the TA to insert references to the e-marketing industry in the simplified outline of the TA Act.

Items 4 to 6 insert definitions in the interpretation section of the TA, including a definition of the e-marketing industry.

Section 106 of the TA is the simplified outline for Part 6—Industry Codes and Industry Standards for the telecommunications industry. **Item 7** inserts a reference to the e-marketing industry in the outline at section 106.

Item 8 inserts a **new section 108A** and a **new section 108B** into Part 6 of the TA to include references to an electronic messaging service provider. These amendments are also drafted to maintain consistency with technical definitions in the Spam Bill 2003.

Item 10 inserts a new section 109A in Part 6 of the TA to specify criteria that identify what an e-marketing activity is for the purposes of industry codes and standards that are developed by bodies and associations that represent sections of the telecommunications industry. **Item 13** inserts a **new section 110A** in the TA to clarify that there are sections of the e-marketing industry that may develop relevant codes and standards. Likewise, **Item 14** inserts a **new section 111A** and a **new section 111B** in the TA to define participants in a section of the e-marketing industry and what constitutes an unsolicited commercial electronic message, respectively.

Division 3 of Part 6 of the TA deals with matters such as the statement of regulatory policy applicable to the general principles relating to industry codes and standards. The administration of the policy rests with the ACA. The ACA is established under the *Australian Communications Authority Act 1997*. The ACA is the successor body to the amalgamation of AUSTEL and the Spectrum Management Authority. The ACA is empowered to give directions to carriers and telecommunications service providers. The ACA regulates the telecommunications industry. **Item 15** inserts a **new subsection 112(1A)** in the TA to expressly state that it is Parliament's intention that the ACA's regulation extends to the examination of industry codes prepared by sections of the e-marketing industry. **Item 18** inserts **new subsections 112(3A) and 112(3B)** in the TA to provide criteria that the ACA must take into account when determining when public interest considerations are being addressed. The criteria include factors such as the number of end-users likely to benefit from the code and the administrative and financial burdens on the industry.

Item 21 inserts a new paragraph **113(3)(q)** in the TA to give examples of matters relevant to the e-marketing industry that may be dealt with by industry codes and standards. Basically, the codes are expected to deal with agreed procedures and actions that will be taken by the industry to combat spam.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Items 22 to 38 are minor reference amendments.

Item 39 inserts a **new Division 7—Miscellaneous** in Part 6 of the TA to provide limited immunity from civil proceedings for an Internet Service Provider (ISP) or an electronic messaging service provider who undertakes filtering of e-mail messages, provided the action that is taken is consistent with applicable industry codes and standards. The limited immunity in the **new Division 7—Miscellaneous** does not apply.

(The amendments made by Part 2, below, of Schedule 1 commence 120 days after Royal Assent is given to the *Spam Act 2003*.)

Australian Communication Authority Act 1997

As noted above, the ACA is to be the regulator of the e-marketing industry. The ACA is established under the *Australian Communications Authority Act 1997* (ACAA). **Items 42 and 43** insert specific references in the ACAA to the *Spam Act 2003*.

Telecommunications Act 1997

Items 44 to 63 make minor consequential amendments to the TA to insert references to the *Spam Act 2003* for the purposes of inclusion in existing provisions that deal with matters such as inquiries, investigations and enforcement by the ACA. In passing, it should be noted that, apart from hearings conducted by the ACA, the Minister may give a direction to the Australian Competition and Consumer Commission (ACCC) to hold an inquiry into specified matters in the telecommunications industry (see Part 25—Public Inquiries of the TA). **Item 50** inserts a reference to the *Spam Act 2003* as a matter that may be the subject of a hearing by the ACCC.

Item 71 adds a **new Division 5A—Searches to monitor compliance with the *Spam Act 2003*** and a **new Division 5B—Access to computer data that is relevant to the *Spam Act 2003*** to the existing search provisions, used to monitor compliance in the telecommunications industry, to the TA (in Part 28—Enforcement). The new Divisions comprise **new sections 547A to 547J** which deal with procedures, protections and compensation (if relevant) associated with monitoring, entry and searches by ACA inspectors.

Items 72 to 87 are minor consequential amendments.

Concluding Comments

Concluding comments are made in the accompanying Bills Digest on the Spam Bill 2003.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.