

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 236

Issued by the Authority of the Minister for Communications, Information Technology
and the Arts

Telecommunications Act 1997

Telecommunications Amendment Regulations 2006 (No. 1)

Subsection 594(1) of the *Telecommunications Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulations is to permit telecommunications carriers and carriage service providers to disclose telecommunications call data to the Office of Police Integrity of Victoria. The Regulations amend the *Telecommunications Regulations 2001* (the Principal Regulations) to provide that the Office of Police Integrity of Victoria is a 'prescribed authority' for the purposes of paragraph (g) of the definition of 'criminal law-enforcement agency' in subsection 282(10) of the Act.

Part 13 of the Act provides that telecommunications carriers, carriage service providers and certain other persons must protect the confidentiality of information or documents that relate to:

- (a) the contents of communications that have been, or are being, carried by carriers or carriage service providers;
- (b) carriage services supplied by carriers and carriage service providers; and
- (c) the affairs or personal particulars of other persons.

The primary disclosure/use offences are set out in sections 276, 277 and 278 of the Act.

The disclosure or use of such information or documents is authorised in limited circumstances. Subsections 282(3) to (6) of the Act permit the disclosure of telecommunications call data (other than the contents or substance of a communication) in circumstances where an authorised officer of a criminal law-enforcement agency has certified that the disclosure is reasonably necessary for the enforcement of the criminal law, a law imposing a pecuniary penalty or the protection of the public revenue. The definition of 'criminal law-enforcement agency' in subsection 282(10) lists certain bodies that are criminal law-enforcement agencies and paragraph (g) of this definition provides that they may include a prescribed authority established by or under a law of the Commonwealth, a State or a Territory. The Principal Regulations prescribe a number of such agencies.

Telecommunications carriers and carriage service providers are already permitted to disclose telecommunications call data to a number of criminal law-enforcement agencies, including the Australian Federal Police, a police force of a State or Territory, the Australian Crime Commission, the New South Wales Crime Commission, the Independent Commission Against Corruption of New South Wales and the Crime and Misconduct Commission of Queensland (paragraphs (a) to (f) of the definition of ‘criminal law-enforcement agency’ in subsection 282(10) of the Act) and the Police Integrity Commission of New South Wales, the Anti-Corruption Commission and the Corruption and Crime Commission of Western Australia (paragraphs 5.1(a), (c) and (d) of the Principal Regulations).

The Office of Police Integrity of Victoria was established in 2004 by section 102A of the *Police Regulation Act 1958* (Vic.), effectively replacing the Police Ombudsman. The Office was established to ensure that police corruption and serious misconduct is detected, investigated and prevented and to ensure the Victoria Police maintains the highest professional and ethical standards. Victorian legislation confers various covert investigative powers on the Director, Police Integrity, including the ability to use surveillance devices and to conduct controlled operations. Section 102A of the *Police Regulation Act 1958* (Vic.) provides for the Director, Police Integrity to be the same person as the person who holds office as the Victorian State Ombudsman.

It is proposed that the Office of Police Integrity be granted similar powers under the *Telecommunications (Interception and Access) Act 1979* to receive and use material lawfully obtained from the interception of telecommunications (such as the details of a telephone conversation). The Regulations complement these proposed powers by allowing the Office of Police Integrity to receive and use telecommunications call data (such as the details of who made a telephone call to whom and when) for investigative and evidentiary purposes.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA) (see paragraph 6(a) of the LIA). The Attorney-General’s Department (being the Department that administers the *Telecommunications (Interception and Access) Act 1979*) and the Australian Communications and Media Authority (being the body that may exercise powers under the *Telecommunications Act 1997*) were consulted about the Regulations. Wider consultation was considered unnecessary due the minor and machinery nature of the Regulations (see paragraph 18(2)(a) of the LIA).

Details of the Regulations are set out in the [Attachment](#).

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

ATTACHMENT**DETAILS OF THE *TELECOMMUNICATIONS AMENDMENT REGULATIONS 2006 (NO. 1)*****Regulation 1 – Name of Regulations**

This regulation provides that the name of the Regulations is the *Telecommunications Amendment Regulations 2006 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Amendment of *Telecommunications Regulations 2001*

This regulation provides that the *Telecommunications Regulations 2001* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 Amendment**Item 1 – After paragraph 5.1(a)**

Item 1 inserts new paragraph 5.1(aa) after paragraph 5.1(a) in the Principal Regulations. New paragraph 5.1(aa) provides that the Office of Police Integrity established by section 102A of the *Police Regulation Act 1958* of Victoria is a ‘prescribed authority’ for the purposes of paragraph (g) of the definition of ‘criminal law-enforcement agency’ in subsection 282(10) of the *Telecommunications Act 1997*.