

EXPLANATORY STATEMENT

Issued by the Authority of the Attorney-General

Telecommunications (Interception and Access) Act 1979

*Telecommunications (Interception and Access)
(Emergency Service Facilities – Queensland) Instrument 2015*

The *Telecommunications (Interception and Access) Act 1979* (the TIA Act) establishes a general prohibition against the interception of communications passing over a telecommunications system. The purpose of the *Telecommunications (Interception and Access) (Emergency Service Facilities – Queensland) Instrument 2015* (the Instrument) is to ensure that listening to or recording calls to and from a declared emergency service facility is not an interception for the purposes of the TIA Act.

Subsection 6(2F) of the TIA Act provides that a person who is lawfully engaged in duties relating to the receiving and handling of communications to or from an ‘emergency service facility’ may listen to or record the communications without contravening the general prohibition against interception. Subsection 6(2B) of the TIA Act requires that the Minister must be satisfied that the premises are operated by one of the listed forces or services to enable that force or service, or another force or service, to deal with a request for assistance in an emergency.

This exception only applies to emergency services facilities that are declared by the Minister pursuant to subsection 6(2B) of the TIA Act. The *Telecommunications (Interception and Access) (Emergency Service Facilities – Queensland) Declaration 2015* (the Declaration) is made under subsection 6(2B) of the TIA Act. The Attorney-General, as Minister, is satisfied that the operations at these facilities meet the requirements of subsection 6(2B) of the TIA Act as a Commonwealth, a State or ACT police force or service, State or ACT fire or ambulance service, or a service for despatching, or referring matters for the attention of, those services.

To protect against the publication of the location of the facilities, which are critical infrastructure, a declaration under subsection 6(2B) of the TIA Act is not classified as a legislative instrument.

To maintain Parliamentary scrutiny of the declarations, subsection 6(2D) of the TIA Act provides that the Minister must, by legislative instrument, specify the name of the force or service operating the premises to which the declaration relates, and the geographical region in which those premises are located. The Instrument is made under subsection 6(2D) of the TIA Act. The Instrument replaces the previous Instrument and adds new emergency service facilities operated by Airservices Australia’s Aviation Rescue and Fire Fighting Service in the geographic regions listed on the Instrument.

Airservices Australia’s Aviation Rescue and Fire Fighting Service was consulted on the Declaration and Instrument.

The Instrument commences on the day after it is registered.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Telecommunications (Interception and Access)(Emergency Service Facilities – Queensland) Instrument 2015* (‘the Instrument’) is to ensure that listening to or recording calls to and from a declared emergency service facility is not an interception for the purposes of the *Telecommunications (Interception and Access) Act 1979* (the TIA Act).

Human rights implications

Unlawful or arbitrary interference with a person’s privacy or correspondence

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) prohibits arbitrary or unlawful interference with a person’s privacy, family, home or correspondence. Interferences with privacy may be permissible, provided that they are authorised by law and not arbitrary. In order for an interference with the right to privacy not to be ‘arbitrary’, the interference must be for a reason consistent with the provisions, aims and objectives of the ICCPR and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted ‘reasonableness’ in this context to imply that ‘any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case’.

Interceptions of telecommunications will limit the right to protection from arbitrary and unlawful interference with privacy in Article 17 of the ICCPR. The measures in the Instrument are necessary to protect the right to life by ensuring that emergency services are able to assist an emergency caller and respond to an emergency situation as quickly as possible, without the requirement to first obtain a caller’s consent to recording of the call.

Despite the general prohibition on the interception of communications without the knowledge of parties in subsection 6(1) of the TIA Act, facilitating the listening to and recording of emergency calls made to police, fire and ambulance services under subsection 6(2F) of the TIA is compatible with Article 17 of the ICCPR. This right may be limited if the limitations are for a legitimate objective, including the protection of the right to life which includes positive obligations to protect life.

The Instrument is subject to a number of safeguards, including:

- the exception for recording calls to and from a declared emergency service facility applies only if the Attorney-General is satisfied that the premises are operated by a Commonwealth, State or ACT police force or service, a State or ACT fire or ambulance service, or a service for despatching, or referring matters for the attention of, those services, and
- the emergency service facility exception is subject to the requirement in subsection 6(2G) to ensure signs are clearly visible at each entrance to the facility and notifying persons that communications to or from the facility may be listened to or recorded. As an additional safeguard, only premises that handle emergency calls are listed.

In addition, the location of emergency service facilities is protected as critical infrastructure information. This information is contained in the Attorney-General’s declaration under subsection 6(2B) of the TIA Act, which is not classified as a legislative instrument and is not made public. The information is stored in appropriately classified containers by the Australian Government. This Instrument specifies only the name of the force or service operating the premises to which the declaration relates, and the geographical region in which those premises are located.

To the extent that the measures in the legislative instrument may limit the right to protection from arbitrary and unlawful interference with privacy in Article 17 of the ICCPR, the limitation is proportionate to the legitimate objective.

Conclusion

The Instrument is compatible with human rights because it advances the protection of human rights and to the extent that it limits human rights, those limitations are authorised by law, reasonable and proportionate.

**Senator the Hon George Brandis QC
Attorney-General**