

EXPLANATORY STATEMENT

Telecommunications Act 1997

Telecommunications (Integrated Public Number Database – Public Number Directory Additional Information) Instrument 2017

Issued by the Authority of the Minister for Communications

The *Telecommunications (Integrated Public Number Database – Public Number Directory Additional Information) Instrument 2017* (the Instrument) allows for information that a qualifying entity and a public number directory publisher have agreed upon, orally or in writing, to be included in a public number directory.

The Instrument repeals and replaces the *Telecommunications (Integrated Public Number Database – Public Number Directory Additional Information) Instrument 2007* (the 2007 Instrument) which is due to sunset on 1 October 2017, under Part 6 of the *Legislation Act 2003* (the Legislation Act). Following review, it was determined that the provisions contained within the 2007 Instrument were operating effectively and efficiently, and continued to form a necessary and useful part of the regulatory framework.

Context and purposes of the Instrument

The Integrated Public Number Database (the IPND) is an industry-wide database of public telephone numbers (both listed and unlisted) in use and associated customer information including name and address information. It also includes information such as whether the number or address is to be listed in a public number directory and whether the number is used for residential, business, government or charitable purposes.

The IPND is established and maintained by Telstra Corporation Limited (Telstra) as a condition of its carrier licence. All carriage service providers which supply carriage services to customers who have public numbers are obliged to provide customer information to Telstra for inclusion in the IPND.

Information in the IPND can be accessed by persons to publish public number directories and for certain authorised research purposes.

The definition of public number directory under section 285(2) of the *Telecommunications Act 1997* (the Telecommunications Act) provides that no additional information in relation to a qualifying entity may be included in a public number directory, unless it is of a kind specified in an instrument under subsection 285(4). The Instrument specifies that this additional information must be as agreed between the public number directory publisher and the qualifying entity.

Under section 295A of *Telecommunications Act 1997* (the Telecommunications Act), the Australian Communications and Media Authority (ACMA) must make a scheme for the granting of authorisations to access the IPND for the purposes of paragraph 285(1A)(d) of the Telecommunications Act. Those purposes are the publication and maintenance of a public number directory, both online and printed directories, and the conduct of research of a kind

specified in a legislative instrument, by the Minister, where the Minister is satisfied that the kind of research is in the public interest.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required on the basis that the Instrument replaces an instrument that is sunsetting, the 2007 Instrument.

Statement of compatibility with human rights

A statement of compatibility is set out at Attachment A.

Consultation

The Instrument has been updated in consultation with the ACMA and current users of the IPND. The then Department of Communications completed a review of the IPND in 2015 which identified the need to retain the current IPND. The review involved public consultation, and the report is available on the department's website.

Legislative Basis

The Instrument is made under subsection 285(4) of the Telecommunications Act, which empowers the Minister, by legislative instrument, to specify kinds of information for the purposes of subparagraph (c)(i) of the definition of public number directory in subsection (2). The Minister may specify different kinds of information in relation to different kinds of qualifying entities.

The Instrument is a legislative instrument for the purposes of the Legislation Act (see section 8 of that Act).

NOTES ON CLAUSES

Section 1 – Name

Section 1 provides that the name of the legislative instrument is the *Telecommunications (Integrated Public Number Database – Public Number Directory Additional Information) Instrument 2017*.

Section 2 - Commencement

Section 2 provides that the Instrument commences on the day after the instrument is registered.

Section 3 – Authority

Section 3 provides that the Instrument is made under section 285(4) of the Telecommunications Act which provides that the Minister may, by legislative instrument, specify additional kinds of information in relation to qualifying entities that can be contained in a public number directory.

Section 4 – Definitions

Section 4 provides definitions of terms used in the instrument.

The term *Act* is defined to mean the *Telecommunications Act 1997*.

Integrated public number database scheme is defined to mean the scheme in force under section 295A of the Act.

Public number directory is defined to have the same meaning given by subsection 285(2) of the Act.

Public number directory authorisation is defined to have the same meaning as in the *Telecommunications (Integrated Public Number Database Scheme – Conditions for Authorisations) Determination 2017*.

Public number directory publisher is defined to have the same meaning given by section 1.4 of the *Telecommunications Integrated Public Number Database Scheme 2017*.

Qualifying entity has the meaning given by subsection 285(2) of the Act. A qualifying entity under the Act is a person or body carrying on a business, a registered charity, educational institution, Government department, agency or authority and can agree to have additional information included in a public number directory under paragraph (c) of the definition of public number direction in subsection 285(2) of the Act.

Section 5 – Schedules

Section 5 provides that each instrument that is specified in Schedule 1 is repealed as set out in the Schedule.

Section 6 – Specification

Subsection 6(1) provides that if a ‘qualifying entity’ and a public number directory producer agree orally or in writing, a public number directory may contain additional information about the qualifying entity.

The definition of public number directory in section 285(2) of the Telecommunications Act states that public number directories may only contain the name, public number and, optionally, address of a person or body. While this has the effect of protecting the privacy of individuals, it also excludes additional information, such as email addresses, opening hours and business category, for businesses and other entities from being included in a public number directory. The intent of this legislative instrument is to enable additional information to be included in a public number directory in relation to qualifying entities.

Allowing additional information about qualifying entities to be included in a public number directory reflects current industry practice and community demand and provides public number directory publishers the flexibility to determine, with the agreement of relevant qualifying entities, the content of their directories. The intention is also to give the entities themselves control over what information is included about them in a directory by requiring public number directory publishers to obtain their prior consent to the inclusion and publication of that information.

Subsection 6(2) requires that, where there is an oral agreement between a public number directory publisher and a qualifying entity, for the information to be specified, the public number directory publisher must create and keep a record of the agreement and intend to keep a copy of the agreement for a minimum period of two years.

A record of an oral agreement could be in the form, for example, of a recording or a file note.

Schedule 1 – Repeals

Schedule 1 repeals the *Telecommunications (Integrated Public Number Database – Public Number Directory Additional Information) Instrument 2007 (No. 1)* which is due to sunset on 1 October 2017 so that it can be replaced with this Instrument.

Statement of Compatibility with Human Rights

Prepared in accordance with subsection 9(1) of the Human Rights (Parliamentary Scrutiny) Act 2011

Telecommunications (Integrated Public Number Database – Public Number Directory Additional Information) Instrument 2017

Overview of the Instrument

The *Telecommunications (Integrated Public Number Database Scheme – Criteria for Deciding Authorisation Applications) Instrument 2017* (the Instrument) provides that a qualifying entity, within the meaning of subsection 285(2) of the *Telecommunications Act 1992* (the Telecommunications Act), and a public number directory publisher may agree orally or in writing to include in a public number directory additional information. A qualifying entity includes certain persons or bodies carrying on a business, registered charities, educational institutions, departments, agencies or authorities. If an oral agreement is reached, the public number directory publisher must create a record of the agreement.

Sections 276 and 277 of the Telecommunications Act prohibit the disclosure or use of information obtained by carriers and carriage service providers in the course of providing their services. The prohibition extends to the disclosure and use of information held in the Integrated Public Number Database (IPND), an industry wide database of all residential and business telephone numbers and associated subscriber information.

Section 285 of the Telecommunications Act contains an exception to the prohibition, and permits disclosure of information from the IPND by Telstra (as the IPND Manager) to a person who holds an authorisation granted by the ACMA to receive IPND information. The *Telecommunications Integrated Public Number Database Scheme 2017* is the scheme under which authorisations may be granted to access information contained in the IPND for the purposes of paragraph 285(1A)(d) of the Telecommunications Act. Those purposes are the publication and maintenance of a public number directory and the conduct of research of a kind specified in a legislative instrument, by the Minister, where the Minister is satisfied that the kind of research is in the public interest.

Human rights implications

It has been assessed whether the Instrument 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 Instrument and the nature of the applicable rights and freedoms, it has been determined that the Instrument engages the right to privacy in Article 17 of the *International Covenant on Civil and Political Rights* (the ICCPR).

Right to privacy

Article 17 of the ICCPR provides:

- 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- 2. Everyone has the right to the protection of the law against such interference or attacks.*

Collecting, using, storing, disclosing or publishing personal information amounts to an interference with privacy. In order for the interference with privacy not to be ‘arbitrary’, any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. Reasonableness, in this context, incorporates notions of proportionality, appropriateness and necessity.

The definition of public number directory in section 285(2) of the Telecommunications Act provides that public number directories may only contain the name, public (listed) number and, optionally, address of a person or body. While this has the effect of protecting the privacy of individuals, it also excludes additional information, such as email addresses, opening hours and business category, for businesses and other entities from being included in a public number directory.

The Instrument allows such additional information to be included in a public number directory, subject to an agreement by a qualifying entity and a public number directory publisher as to the inclusion and publication of that information. That is, the qualifying entity must agree to the inclusion of the additional information before it can be included within the directory.

These protections under the Telecommunications Act and the IPND Scheme ensure that IPND information is used only for strictly prescribed purposes and in defined circumstances. To the extent that the measures in the Instrument limit the right to privacy, they are lawful and non-arbitrary.

Conclusion

The Instrument is compatible with human rights. To the extent that it limits any human rights, those impacts are reasonable, necessary and proportionate.