

EXPLANATORY STATEMENT

Telecommunications Act 1997

Telecommunications (Integrated Public Number Database Scheme – Criteria for Deciding Authorisation Applications) Instrument 2017

Issued by the Authority of the Minister for Communications

The *Telecommunications (Integrated Public Number Database Scheme – Criteria for Deciding Authorisation Applications) Instrument 2017* (the Instrument) specifies the criteria that the Australian Communications and Media Authority (ACMA) must apply when deciding applications for authorisations for access to personal information contained in the Integrated Public Number Database (IPND), which may be granted under the *Integrated Public Number Database Scheme 2017* (the IPND Scheme).

Instrument repeals and replaces the *Telecommunications (Integrated Public Number Database Scheme – Criteria for Deciding Authorisation Applications) Instrument 2007 (No. 1)* (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 legislative framework.

Context and purposes of the instrument

The IPND is an industry-wide database of public telephone numbers (both listed and unlisted) 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.

Under section 295A of *Telecommunications Act 1997* (the Telecommunications Act), the 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 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.

Following a review by the ACMA in 2016, the IPND Scheme enables the ACMA to grant research authorisations on an ongoing basis, and authorise a research body to

disclose de-identified IPND data (i.e. excluding customer names) to its members for permitted research purposes provided certain requirements are met.

The IPND Scheme requires persons seeking access to information in the IPND for the purposes of publishing and maintaining a public number directory or conducting research the Minister considers to be in the public interest, to apply to the ACMA for an authorisation before access to IPND information may be granted. The ACMA must apply the criteria set out in the Instrument before granting such an authorisation.

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 *Telecommunications (Integrated Public Number Database Scheme – Criteria for Deciding Authorisation Applications) Instrument 2007 (No. 1)*.

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 section 295N of the Telecommunications Act.

Subsection 295N(1) provides that the Minister must, by legislative instrument, specify criteria for deciding authorisation applications made under the IPND Scheme.

Subsection 295N(2) permits the Minister to specify different criteria for different kinds of authorisation applications.

Subsection 295N(3) provides that, in deciding an authorisation application, the ACMA must apply the criteria applicable to the application, and may have regard to any other matters that it thinks are relevant.

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 Instrument is the *Telecommunications (Integrated Public Number Database Scheme – Criteria for Deciding Authorisation Applications) 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 295N of the Telecommunications Act which provides that the Minister must by legislative instrument, specify criteria for deciding authorisation applications made under the IPND Scheme.

Section 4 - Definitions

Section 4 defines the terms and concepts used in the Instrument.

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

The term *candidate* is defined to have the same meaning as in the *Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017*. This is defined to mean a person who has been nominated as a candidate under the *Commonwealth Electoral Act 1918*, or under a law of a State or Territory that deals with electoral matters.

Commonwealth entity is defined to have the same meaning given by section 10 of the *Public Governance, Performance and Accountability Act 2013*.

The term *contractor* is defined to mean a person who performs services for and on behalf of the holder of a public number directory authorisation or a research authorisation but does not include a person who performs such services in the capacity of an employee of the holder.

The term *customer* is defined to mean a person who is supplied with a carriage service by a carriage service provider.

Customer data is defined to have the same meaning as in the *Telecommunications Integrated Public Number Database Scheme 2017*. Customer data includes the public number, name, directory finding name, and the directory address of a customer or their business. 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.

Electoral matter is defined to have the same meaning as in the *Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017*. This is defined to mean a matter which is intended or likely to affect voting in:

- an election under a law of the Commonwealth, or a law of a State or Territory, relating to elections to a Parliament or to a local government authority; or
- a referendum under a law of the Commonwealth or a law of a State or Territory..

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

Local government authority is defined to have the same meaning as in the *Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017*. This is defined to mean a local governing body established by or under a law of a State or a Territory.

Parliament is defined to have the same meaning as in the *Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017*. This is defined to mean the Parliament of the Commonwealth, a State Parliament, or the legislature of a Territory.

Political representative is defined to have the same meaning as in the *Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017*. This is defined to mean a member of a Parliament, or a councillor (however described) of a local government authority.

Protected information is defined to mean information or a document disclosed under subsection 285(1A) of the Act for a purpose covered by subparagraph 285(1A)(c)(ii) or subparagraph 285(1A)(c)(iv) of the Act.

Public mobile telecommunications service is defined to have the meaning given by section 32 of the Act.

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

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

Public number directory authorisation is defined to mean an authorisation under the integrated public number database scheme that permits the person to whom it is granted to use and disclose protected information for a purpose covered by subparagraph 285(1A)(c)(ii) of the Act.

Registered political party is defined to have the same meaning as in the *Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017*. This is defined to mean a political party, or a branch or division of a political party, that is registered under the *Commonwealth Electoral Act 1918* or under a law of a State or Territory that deals with electoral matters and provides for the registration of political parties.

Research authorisation is defined to mean an authorisation under the integrated public number database scheme that permits the person to whom it is granted to use and disclose protected information for a purpose covered by subparagraph 285(1A)(c)(iv) of the Act.

There is a note at the end of the section indicating that a number of expressions used in the instrument are defined in section 7 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 – Criteria for deciding applications for public number directory authorisations

The application process will enable the ACMA to scrutinise persons seeking access to IPND information and the way in which IPND information is proposed to be disclosed and used. Scrutiny by the ACMA is intended as a safeguard for preventing inappropriate use of IPND information pursuant to section 6 by public number directory publishers.

The criteria for public number directory publishers is intended to enable the ACMA to assure itself that IPND information will be used for the purpose set out in the Telecommunications Act, and that applicants, if granted an authorisation, will comply with the requirements of the Telecommunications Act and the integrated public number database scheme.

Subsection 6(1) sets out the criteria for deciding applications for public number directory authorisations. Paragraph 6(1)(a) requires the ACMA to be reasonably satisfied that the applicant's proposed public number directory meets the requirements of the definition of public number directory in subsection 285(2) of the Telecommunications Act.

Paragraph 6(1)(b) requires that the applicant, if granted an authorisation, will use IPND information for the authorised purpose, that is, for the publication and maintenance of a public number directory.

Paragraph 6(1)(c) requires the ACMA to be reasonably satisfied that the applicant, if granted an authorisation, will comply with the requirements of the Telecommunications Act, and the IPND scheme.

Paragraph 6(1)(d) requires the ACMA, when deciding the application, to consider any processes the applicant has in place, or intends to put in place, to protect the privacy and security of the IPND information.

Subsection 6(2) requires the ACMA, when assessing an application against criteria in paragraphs 6(1)(b) and 6(1)(c), to take into account an applicant's past compliance with the Telecommunications Act in relation to any previous use of customer data. Alternatively, if the applicant does not have a track record of previous customer data use and compliance, then the ACMA may consider whether the applicant has appropriate processes in place that will enable the applicant, and any contractor, to comply with the requirements of the Telecommunications Act, relevant legislative instruments, and the IPND Scheme in relation to its future use of customer data.

Use of the term 'reasonably satisfied' throughout the criteria recognises that the ACMA must be reasonably satisfied in the particular circumstances of each application and the information provided by the applicant. It does not prevent the ACMA from requesting further information from the applicant when assessing applications, as paragraph 295N(3)(b) of the Telecommunications Act permits the

ACMA to have regard to any other matters that it thinks are relevant when deciding an authorisation application.

Section 7 – Criteria for deciding applications from researchers

Subsection 7(1) sets out the criteria for deciding applications from researchers. Paragraph 7(1)(a) requires the ACMA to be reasonably satisfied that the proposed research is of a kind specified in the *Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017*.

The *Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017* specifies three kinds of permitted research:

- research, or the compilation or analysis of statistics, relevant to public health, including epidemiological research, where the research is not conducted for a primarily commercial purpose;
- research regarding an electoral matter conducted by a registered political party, a political representative, a candidate in an election for a Parliament or a local government authority or a person on behalf of such a party, representative or candidate, where the research is not conducted for a primarily commercial purpose;
- research conducted by or on behalf of the Commonwealth or a Commonwealth entity which will contribute to the development of public policy, where the research is not conducted for a primarily commercial purpose.

Research conducted under any of these specified research purposes must not be conducted for a primarily commercial purpose. An additional criterion is therefore included in paragraph 7(1)(b) requiring the ACMA to be reasonably satisfied that the proposed research will not be conducted for a primarily commercial purpose.

Paragraph 7(1)(c) requires the ACMA to be reasonably satisfied that the applicant will use protected information for a purpose covered by subparagraph 285(1A)(c)(iv) of the Telecommunications Act, the conduct of specified kinds of permitted research.

Paragraph 7(1)(d) requires the ACMA to be reasonably satisfied that the applicant will otherwise comply with the requirements of the Telecommunications Act, and the IPND scheme.

Paragraph 7(1)(e) requires the ACMA to consider what processes the applicant has in place, or intends to put in place, to protect the privacy and security of protected information.

Subsection 7(2) requires the ACMA, when assessing an application against criteria in paragraphs 7(1)(b) and 7(1)(c), to take into account an applicant's past compliance with the Telecommunications Act in relation to any previous use of customer data. Alternatively, if the applicant does not have a track record of previous customer data use and compliance, then the ACMA may consider whether the applicant has appropriate processes in place that will enable the applicant, and any contractor, to comply with the requirements of the Telecommunications Act, relevant legislative instruments and the IPND Scheme in relation to its future use of customer data.

In relation to research regarding an electoral matter and research which will contribute to the development of public policy, the instrument is very specific about which persons may conduct such research. Subsection 7(3) requires the ACMA, before granting an authorisation, to be reasonably satisfied that the applicant for the authorisation for research regarding an electoral matter is a registered political party, a political representative, a candidate in an election for a Parliament or local government authority, or is a person acting on behalf of such a party, representative or candidate.

Subsection 7(4) sets out additional criteria for a research authorisation in relation to research which will contribute to the development of public policy. Paragraph 7(4)(a) requires the ACMA, before granting an authorisation, to be reasonably satisfied that the research will be conducted by or on behalf of the Commonwealth or a Commonwealth entity. Paragraph 7(4)(b) requires the ACMA, before granting an authorisation for research which will contribute to the development of public policy, to be reasonably satisfied that the applicant has demonstrated that the research will in fact contribute to the development of public policy.

Use of the term ‘reasonably satisfied’ throughout the criteria recognises that the ACMA must be reasonably satisfied in the particular circumstances of each application and the information provided by the applicant. It does not prevent the ACMA from requesting further information from the applicant when assessing applications, as paragraph 295N(3)(b) of the Telecommunications Act permits the ACMA to have regard to any other matters that it thinks are relevant when deciding an authorisation application.

Schedule 1 – Repeals

Schedule 1 repeals the *Telecommunications (Integrated Public Number Database Scheme – Criteria for Deciding Authorisation Applications) Instrument 2007 (No. 1)* which is due to sunset on 1 October 2017 so it can be replaced with this new 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 Scheme – Criteria for Deciding Authorisation Applications) Instrument 2017

Overview of the instrument

The *Telecommunications (Integrated Public Number Database Scheme – Criteria for Deciding Authorisation Applications) Instrument 2017* (the Instrument) specifies the criteria the Australian Communications and Media Authority (the ACMA) must apply when deciding applications for authorisations for access to personal information contained in the Integrated Public Number Database (the IPND), which may be granted under the Integrated Public Number Database Scheme (the IPND Scheme).

Section 6 provides the criteria for deciding applications for Public Number Directory authorisations and section 7 provides the criteria for deciding applications for researchers. Holders of authorisations granted under the Instrument provide a range of services and products to governments, subscribers and the general public, which would not be possible, or would be more difficult to provide, without a system like the IPND. The ACMA can only grant an authorisation if it considers that the strict conditions in the Instrument are met, while the Telecommunications Act and the IPND Scheme impose conditions on the use of IPND information.

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 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 to a person who holds an authorisation granted by the ACMA to receive IPND information. Authorisations to access information contained in the IPND for the purposes of paragraph 285(1A)(d) of the Telecommunications Act may be granted under the IPND Scheme enabled by the *Telecommunications Integrated Public Number Database Scheme 2017* made under section 295A 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.

In authorising access to the IPND, the ACMA must assure itself that IPND information will be used for the purposes set out in the Telecommunications Act, and that applicants, if granted an authorisation, will comply with the Telecommunications Act and any legislative instruments, including the IPND Scheme and conditions of authorisation.

The criteria in the Instrument have been drafted in recognition of the sensitive nature of IPND information, and work to ensure the privacy of the information is protected. The ACMA is required to consider any processes applicants have in place, or intend to put in place, to protect the privacy and security of the IPND information.

The application process will enable the ACMA to scrutinise persons seeking access to the IPND for the purposes of publishing and maintaining a public number directory or conducting research the Minister considers to be in the public interest. The criteria in the Instrument will also enable the ACMA to scrutinise the way in which IPND information is proposed to be disclosed and used. Scrutiny by the ACMA is intended as a safeguard for preventing inappropriate use of IPND information by public number directory publishers.

These protections in the IPND Scheme and the Telecommunications Act mean 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.