

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Telecommunications (Interception and Access) Act 1979

Telecommunications (Interception and Access) Amendment Regulations 2019

The *Telecommunications (Interception and Access) Act 1979* (the TIA Act) regulates access to telecommunications content and data. It provides the legal framework for intelligence and law-enforcement agencies to access information held by communications providers for the investigation of criminal offences and other activities that threaten safety and security. The Act prohibits the interception of telecommunications, except in specified circumstances. The Act outlines the issue of warrants for authorising the interception of telecommunications.

Section 300 of the TIA Act relevantly provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the TIA Act.

In addition, section 180X of the TIA Act provides that the Prime Minister shall declare, in writing, one or more persons to be Public Interest Advocates, with provision that the regulations may prescribe matters relating to the performance of the role of a Public Interest Advocate (subsection 180X(3)).

The *Telecommunications (Interception and Access) Amendment Regulations 2019* (the Regulations) amend the *Telecommunications (Interception and Access) Regulations 2017* (the TIA Regulations) to update references to authorities to reflect the transfer of responsibilities from the Attorney-General's Department to the Department of Home Affairs.

In particular, the Regulations amend the TIA Regulations so that provisions refer to the appropriate Minister following transfer of responsibility for the TIA Act from the Attorney-General's portfolio to the Home Affairs portfolio.

The Administrative Arrangements Order was amended on 10 May 2018 to transfer responsibility for the TIA Act from the Attorney-General's Department to the Department of Home Affairs. However, it was intended that certain powers in the TIA Act, related to oversight of intelligence, security and law enforcement agencies, remain with the Attorney-General. Accordingly, on 11 May 2018, the *Home Affairs and Integrity Agencies Legislation Amendment Act 2018* amended a number of provisions in the TIA Act to change the responsible Minister from 'the Minister' to 'the Attorney-General', however the corresponding references to 'the Minister' in the Regulations were not changed. The purpose of the Regulations is to amend particular references to 'the Minister' in the Regulations to make clear on the face of the TIA Regulations that the particular Minister concerned is the Attorney-General.

The Regulations amend provisions in the TIA Regulations relating to journalist information warrants issued under Part 4-1 of the TIA Act to make it clear that the Minister referred to is the Attorney-General, as the minister empowered to issue such warrants, rather than the Minister administering the Act and the Regulations. The Regulations also make a minor

amendment to the heading of section 21 to ensure that the heading reflects the content of the section.

These changes are purely technical in nature and do not substantively affect the operation of the amended provisions.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment B](#).

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

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulations. No Regulation Impact Statement is required. The OBPR consultation reference is 24576.

No other consultation was considered appropriate as the amendment did not substantially change existing arrangements. This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) which envisages consultations where appropriate and reasonably practicable.

The TIA Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

The Regulations commence the day after registration on the Federal Register of Legislation.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Telecommunications (Interception and Access) Amendment Regulations 2018

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 *Telecommunications (Interception and Access) Amendment Regulations 2018* (the Regulations) will amend the *Telecommunications (Interception and Access) Regulations 2017* (the TIA Regulations) to update references to authorities to reflect the transfer of responsibilities from the Attorney-General's Department to the Department of Home Affairs.

In particular, the Regulations amend the TIA Regulations so that provisions refer to the appropriate Minister following transfer of responsibility for the *Telecommunications (Interception and Access) Act 1979* (the TIA Act) from the Attorney-General's portfolio to the Home Affairs portfolio.

The Administrative Arrangements Order (AAO) was amended on 10 May 2018 to transfer responsibility for the TIA Act from the Attorney-General's Department to the Department of Home Affairs. However, it was intended that certain powers in the TIA Act, related to oversight of intelligence, security and law enforcement agencies, remain with the Attorney-General. Accordingly, on 11 May 2018, the *Home Affairs and Integrity Agencies Legislation Amendment Act 2018* amended a number of provisions in the TIA Act to replace references to 'the Minister' with 'the Attorney-General' so that certain powers and functions would remain with the Attorney-General despite the TIA Act now being administered by the Minister for Home Affairs. This included the power to issue journalist information warrants to ASIO under Part 4-1 of the TIA Act.

The Regulations amend provisions in the TIA Regulations relating to journalist information warrants issued under Part 4-1 of the TIA Act to make it clear that the Minister referred to is the Attorney-General, as the minister empowered to issue such warrants, rather than the Minister administering the Act and the Regulations. It does this by replacing references to 'Minister' with 'Attorney-General' in sections 13, 14, 16 and 17 of the TIA Regulations.

The Regulations also make one other minor amendment to the heading of section 21 to ensure that the heading reflects the content of the section.

These changes do not substantively affect the operation of the amended provisions.

Human rights implications

These amendments do not engage any of the applicable rights or freedoms.

Conclusion

These amendments are compatible with human rights and they do not raise any human rights issues.

The Hon Peter Dutton MP, Minister for Home Affairs

ATTACHMENT C**Details of the *Telecommunications (Interception and Access) Amendment Regulations 2018*****Section 1 – Name**

This section provides that the title of the Regulations is the *Telecommunications (Interception and Access) Amendment Regulations 2018* (the Regulations).

Section 2 – Commencement

This section provides that the whole of the instrument is to commence the day after the instrument is registered.

Section 3 – Authority

This section provides that this instrument is made under the *Telecommunications (Interception and Access) Act 1979* (the TIA Act).

Section 4 – Schedule 2

This section provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments**Item 1 – Amendments of listed provisions – substituting references to Minister with references to Attorney-General**

The Administrative Arrangements Order was amended on 10 May 2018 to transfer responsibility for the TIA Act from the Attorney-General’s Department to the Department of Home Affairs. However, it was intended that certain powers in the TIA Act, related to oversight of intelligence, security and law enforcement agencies, remain with the Attorney-General. Accordingly, on 11 May 2018, the *Home Affairs and Integrity Agencies Legislation Amendment Act 2018* amended a number of provisions in the TIA Act to replace references to “the Minister” with “the Attorney-General” so that certain powers and functions would remain with the Attorney-General despite the TIA Act now being administered by the Minister for Home Affairs. This included the power to issue journalist information warrants to ASIO under Part 4-1 of the TIA Act.

This item provides that certain provisions in the TIA Regulations relating to journalist information warrants issued under Part 4-1 of the TIA Act be amended to make it clear that the Minister referred to is the Attorney-General, as the minister empowered to issue such warrants, rather than the Minister administering the Act and the Regulations, by substituting “Minister” with “Attorney-General” in specified provisions of the TIA Regulations.

Paragraphs (a) to (e) of this item substitute “Minister” with “Attorney-General” in subparagraphs 13(3)(a)(i), 14(6)(a)(i) and 17(2)(a)(i) and subsections 14(9), 16(1) and 16(2)

of the TIA Regulations to make it clear that the Minister referred to is the Attorney-General. The effect of these amendments is to make clear that:

- for the purposes of subparagraph 13(3)(a)(i)—further information is given to the Attorney-General in relation to a request by the Director-General of Security;
- for the purposes of subparagraph 14(6)(a)(i)— further information is given to the Attorney-General in relation to a request by the Director-General of Security;
- for the purposes of subsection 14(9)—the Attorney-General may consider a late submission or updated submission;
- for the purposes of subsections 16(1) and (2)—the Attorney-General may require that further information is given to the Public Interest Advocate; and
- for the purposes of subparagraph 17(2)(a)(i)— further information is given to the Attorney-General in relation to a request by the Director-General of Security.

Item 2 – Section 21 (heading)

Section 21 provides that a Public Interest Advocate must give written notice to the Prime Minister of all interests, pecuniary or otherwise, that the Public Interest Advocate has or acquires and that conflicts or could conflict with the proper performance of his or her functions. This item omits the words “to the Minister” in the heading of section 21 to avoid an inconsistency between the heading to section 21, which refers to “the Minister”, and the text of section 21, which refers to “the Prime Minister”.