

Explanatory Statement

Issued by the Authority of the Minister for Home Affairs

Telecommunications (Interception and Access) Act 1979

*Telecommunications (Interception and Access) (Emergency Service Facilities – Queensland)
Amendment Instrument 2019*

1. The *Telecommunications (Interception and Access) (Emergency Service Facilities – Queensland) Amendment Instrument 2019* (the Amendment Instrument) is made under subsection 6(2D) of the *Telecommunications (Interception and Access) Act 1979* (the TIA Act). The Amendment Instrument amends the *Telecommunications (Interception and Access) (Emergency Service Facilities – Queensland) Instrument 2015* (the Instrument).
2. The TIA Act establishes a general prohibition against the interception of communications passing over a telecommunications system. Subsection 6(2F) of the TIA Act provides that if a person who is lawfully engaged in duties relating to the receiving and handling of communications to or from an ‘emergency service facility’ listens to or records the communications, the listening or recording does not constitute an interception of the communication. This only applies to communications to or from those premises which have been declared by the Minister to be an emergency service facility pursuant to subsection 6(2B) of the TIA Act. The Minister may only declare premises to be an emergency service facility if the Minister is satisfied that the premises are operated by one of the listed forces or services in paragraphs 6(2B)(a)-(d), to enable that force or service, or another force or service, to deal with a request for assistance in an emergency.
3. Under the authority of subsection 6(2B) of the TIA Act, the Minister has declared an additional premises operated by Concentrix Services in Brisbane, Queensland as an emergency service facility. This additional declaration is provided for in the *Telecommunications (Interception and Access) (Emergency Service Facilities – Queensland) Declaration 2019* (the Declaration). Details in relation to other premises previously declared under the *Telecommunications (Interception and Access) (Emergency Service Facilities – Queensland) Declaration 2015* remain unchanged. 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 a legislative instrument.
4. While the Minister’s Declaration under subsection 6(2B) of the TIA Act is not a legislative instrument, in order to maintain Parliamentary oversight of the Minister’s power, subsection 6(2D) of the TIA Act provides that, if the Minister makes a declaration under subsection 6(2B) of the TIA Act, 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 purpose of the Amendment Instrument is to specify that information in relation to the new Concentrix Services premises in Brisbane, Queensland. Concentrix Services will be operating the National Relay Service from this premises. The National Relay Service is a government initiative that allows people who are deaf, hard of hearing, and/or have a speech impairment to make and receive phone calls.
5. Schedule 1 to the Amendment Instrument specifies that a new Concentrix Services premises in the geographic region of Brisbane has been declared as an *emergency service facility*. The effect of this is to fulfil the Minister’s duty under subsection 6(2D) of the TIA Act.

6. The Amendment Instrument does not alter arrangements for forces or services specified in the Instrument.
7. The Department of Communications and the Arts was consulted as the Department responsible for the National Relay Service.
8. The Office of Best Practice Regulation (OBPR) has confirmed that a Regulatory Impact Statement is not required. The OBPR Reference is 25741.
9. The Amendment Instrument is a disallowable instrument under section 42 of the *Legislation Act 2003*. A Statement of Compatibility with Human Rights has been prepared and is attached.
10. The Amendment Instrument commences on the day after it is registered on the Federal Register of Legislation.

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

Section 7 of the *Telecommunications (Interception and Access) Act 1979* (the TIA Act) prohibits the interception of communications passing over a telecommunications system, subject to certain exceptions.

Section 6 of the TIA Act provides an exception to the prohibition in section 7 in the case of communications to or from an *emergency service facility*. Subsection 6(2B) empowers the Minister to declare premises to be an *emergency services facility*, where specified conditions in subsection 6(2B) are met. Where the Minister makes a declaration under subsection 6(2B), subsection 6(2D) requires the Minister to specify in a legislative instrument the name of the force or service operating the premises that have been declared, and the geographical region in which the premises are located. The combined effect of the making of a declaration under subsection 6(2B) and an associated legislative instrument under subsection 6(2D) is to provide that listening to or recording a communication to and from the emergency service facility is not an interception of the communication for the purposes of the TIA Act.

The Minister has, under subsection 6(2B) of the TIA Act, previously declared premises in Queensland to be *emergency service facilities*. These facilities are captured under the *Telecommunications (Interception and Access) (Emergency Service Facilities – Queensland) Instrument 2015* (the Instrument). The Minister has subsequently declared an additional premises in Queensland that is operated by Concentrix Services. The *Telecommunications (Interception and Access) (Emergency Service Facilities – Queensland) Amendment Instrument 2019* (the Amendment Instrument) amends the Instrument to capture this new premises which will deliver the National Relay Service, a government initiative that allows people who are deaf, hard of hearing, and/or have a speech impairment to make and receive phone calls.

Human rights implications

Interference with a person's privacy or correspondence

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation, and that everyone has the right to the protection of the law against such interference or attacks. Further, Article 22 of the Convention on the Rights of Persons with Disabilities (CRPD) provides that persons with disabilities have the right to the protection of the law against such interference or attacks and that the privacy of personal, health and rehabilitation information of persons with disabilities shall be protected on an equal basis with others.

The right to privacy under Article 17 can be permissibly limited in order to achieve a legitimate objective and where the limitations are lawful and not arbitrary. The term 'arbitrary' means that 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. 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'.

Despite the general prohibition on the interception of communications without the knowledge of parties in subsection 7(1) of the TIA Act, subsection 6(2F) of the TIA Act permits the listening to and recording of emergency calls made to *emergency services facilities*.

The purpose of this exception is to ensure 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. This ensures that persons requiring emergency assistance are provided with efficient and timely assistance. Recording of a call enables an emergency service to undertake appropriate clarification, review and audit in dealing with an emergency situation which may involve a threat to life.

The Amendment Instrument furthers this purpose by ensuring a new premises operated by Concentrix in the geographic region of Brisbane in Queensland is captured by the exception in subsection 6(2F). This new premises delivers the National Relay Service, a telephone service to persons that are deaf, and hearing and/or speech impaired – including for the relaying of calls to and from emergency service facilities.

The measures in the Amendment Instrument are reasonable and proportionate to achieving the objective of providing assistance in emergency situations. The Amendment 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 Minister for Home Affairs is satisfied that the premises are operated by a police force or service of the Commonwealth, State or ACT; or a fire or ambulance service of a State or ACT; 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 notifying persons that communications to or from the facility may be listened to or recorded.

Accordingly, to the extent that the measures in the Amendment Instrument may limit the prohibition on arbitrary and unlawful interference with privacy in Article 17 of the ICCPR and Article 22 of CRPD, the limitation is proportionate to the legitimate objectives of protecting public order, public health, public safety and the rights and freedoms of others, such as the right to life under Article 6 of the ICCPR and Article 10 of the CRPD.

Right to life

The right to life under Article 6 of the ICCPR includes obligations to promote life, including taking appropriate steps to protect the right to life of those within its jurisdiction. Further, Article 10 of the CRPD reaffirms that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

As discussed above, the Amendment Instrument ensures that Concentrix, as the new operators of the National Relay Service, can provide appropriate and timely assistance in emergency situations for persons with disabilities, which may involve threats to life. Specifically, the inclusion of the new premises in Brisbane ensures that Concentrix can operate the National Relay Service to perform its emergency dispatch and referral function for the deaf, and hearing and/or speech impaired. These emergency services are critical to delivering medical treatment to patients, and have other emergency functions related to protecting the right to life of certain emergency callers in Queensland. In this regard, the Amendment Instrument positively engages the right to life under Article 6 of the ICCPR and Article 10 of the CRPD.

Accessibility for persons with disabilities

Article 9 of the CRPD provides that appropriate measures must be taken to ensure to persons with disabilities access, on an equal basis, to information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas to enable persons with disabilities to live independently and participate fully in all aspects of life. These measures,

which include the identification and elimination of obstacles and barriers to accessibility apply to information, communications and other services, including electronic services and emergency services. Under Article 9 of the CRPD, appropriate measures must be taken to promote access for persons with disabilities to new information and communications technologies and systems.

The Amendment Instrument positively engages the right to accessibility by ensuring that persons with disabilities in use of the National Relay Service, operated by Concentrix, receive appropriate and timely assistance in emergency situations and access to emergency services on an equal basis. The inclusion of a new emergency service facility under the TIA Act in Brisbane enables Concentrix to provide the National Relay Service, which delivers an emergency dispatch and referral function for emergency services. The National Relay Service is critical to ensuring accessibility to emergency services for the deaf, and hearing and/or speech impaired.

Conclusion

The Amendment Instrument is compatible with human rights because it promotes the right to life under Article 6 of the ICCPR and Article 10 of the CRPD, and the right to accessibility under Article 9 of the CRPD. To the extent that the Amendment Instrument limits human rights under Article 17 of the ICCPR and Article 22 of the CRPD, those limitations are permissible because they are authorised by law and are necessary, reasonable and proportionate to achieve a legitimate objective.

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Minister for Home Affairs