

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

Telecommunications (Interception and Access) Act 1979

Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2022 (No. 2)

- 1 The instrument is made under subsection 6R(2) of the *Telecommunications (Interception and Access) Act 1979* (the TIA Act).
- 2 The instrument remakes the *Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2022* (the original 2022 instrument) to take into account a restructure of the Attorney-General's Department.
- 3 The instrument commences on the day after registration on the Federal Register of Legislation, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The TIA Act establishes the position of *Communications Access Co-ordinator* as the primary point of liaison for interception agencies and telecommunications carriers and carriage service providers in relation to telecommunications interception and data retention issues.
- 5 Under section 6R of the TIA Act, the *Communications Access Co-ordinator* is the Secretary of the Attorney-General's Department or a person or body specified by the Attorney-General in a legislative instrument under that section. The original 2022 instrument specified, as a *Communications Access Co-ordinator*, persons who hold, occupy or perform the duties of certain positions in certain work areas in the Attorney-General's Department.
- 6 The original 2022 instrument is required to be remade as a result of a restructure of the Attorney-General's Department. The new instrument:
 - keeps the clarification that the definition of *Group Manager* is a position specific to the Department of Home Affairs
 - now specifies persons who hold or perform the duties of certain positions in the Electronic Surveillance Branch of the National Security and Criminal Justice Group in the Attorney-General's Department as a *Communications Access Co-ordinator*, and
 - continues to specify persons who hold or perform the duties of certain positions in the Cyber and Infrastructure Security Centre in the Department of Home Affairs as a *Communications Access Co-ordinator*.
- 7 The positions that have been specified as a *Communications Access Co-ordinator* remain unchanged from the original 2022 instrument. The changes simply reflect the fact that the National Security Policy Branch has been abolished and functions moved into the new Electronic Surveillance Branch in the National Security and Criminal Justice Group. The positions in the Cyber and Infrastructure Security

Centre (which remains in the Department of Home Affairs and is therefore unaffected by the restructure of the Attorney-General's Department) retain their existing specification.

Consultation

- 8 No consultation was undertaken prior to making the instrument, as it makes technical changes that are minor and machinery in nature.

Details of the instrument

- 9 Section 1 sets out the name of the instrument.
- 10 Section 2 provides for the commencement of the instrument on the day after registration.
- 11 Section 3 notes the instrument is made under subsection 6R(2) of the *Telecommunications (Interception and Access) Act 1979*.
- 12 Section 4 defines words and terms used in the instrument. As per the original 2022 instrument, the definition of *Group Manager* clarifies this is a position in the Department of Home Affairs. This assists with the interpretation of subparagraph 3(2)(b)(ii);
- 13 Section 5 of the instrument specifies persons who hold or perform the duties of the listed positions in:
- the Electronic Surveillance Branch of the National Security and Criminal Justice Group in the Attorney-General's Department, or
 - the Cyber and Infrastructure Security Centre in the Department of Home Affairs
- as a *Communications Access Co-ordinator* for the purposes of subsection 6R(2) of the TIA Act.
- 14 Section 6 of the instrument repeals the original 2022 instrument.

Specification of particular positions

- 15 In assigning CAC-related functions to particular classification levels, the Attorney-General's Department and Department of Home Affairs have had regard to the Australian Public Service Commission's APS Work Level standards and Integrated Leadership System. In addition, sections 25 to 29 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) set out the general duties that apply to officials and require all officials to meet high standards of governance, performance and accountability.
- 16 Decisions under the *Telecommunications (Interception and Access) Act 1979* relating to Interception Capability Plans and exemption and variation requests from interception and data retention obligations are high volume. For example, for the period between May and mid-September 2022, there were over 260 decisions on Interception Capability Plans and over 30 on interception or data retention obligations. It is appropriate therefore that these decisions be taken at the EL1 and EL2 level, noting the training and support in place to support that decision making, as set out below.
- 17 Further, more sensitive or complex decisions – for example, issuing a notice (under section 56A of the *Telecommunications Act 1997*) to the Australian Communications and Media Authority that it may not

issue a carrier licence – are referred to an SES Band 1 decision-maker to ensure decisions are subject to additional and appropriate oversight.

- 18 For decisions under section 314A of the *Telecommunications Act 1997* (security notification obligations) these decisions are generally taken at the SES Band 1 level. This is supported by a technical threat assessment carried out by a subject matter expert informed by consultation with relevant agencies (and reviewed by an EL1 and EL2).
- 19 The Attorney-General's Department and the Department of Home Affairs have in place systems and processes to ensure Communications Access Coordinators (CACs) are appropriately trained and make decisions commensurate with their classification level.
- 20 The role of a CAC is supported by significant on the job training, mentoring and policy guidance so that all CACs are appropriately qualified to perform the functions and make the decisions assigned to their particular classification level. The Attorney-General's Department and Department of Home Affairs also have guides and standard operating procedures in place detailing the processes for making CAC decisions.
- 21 In addition, both the Attorney-General's Department and Department of Home Affairs consult closely with law enforcement and national security agencies on all decisions so that CACs are appropriately informed of relevant technical issues and the needs of the law enforcement and national security agencies.

Parliamentary scrutiny etc.

- 22 The instrument is subject to disallowance under section 42 of the Legislation Act. A Statement of Compatibility with Human Rights has been prepared in relation to the instrument, and provides that the instrument does not raise any human rights issues. The Statement is included at **Attachment A** to this explanatory statement.
- 23 The instrument was made by the Attorney-General in accordance with subsection 6R(2) of the TIA Act.

Statement of Compatibility with Human Rights

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

Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2022 (No. 2)

This Disallowable 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 Disallowable Legislative Instrument

The *Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2022 (No. 2)* (the new 2022 instrument) is made under subsection 6R(2) of the *Telecommunications (Interception and Access) Act 1979* (the TIA Act). Under section 6R of the TIA Act, the *Communications Access Co-ordinator* is the Secretary of the Attorney-General's Department or a person or body specified by the Attorney-General in a legislative instrument under that section.

The *Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2022* specified, as a *Communications Access Co-ordinator*, persons who hold, occupy or perform the duties of certain positions in certain work areas in the Attorney-General's Department.

The new 2022 instrument defines as a *Communications Access Co-ordinator*:

- persons who hold or perform the duties of listed positions in the Electronic Surveillance Branch of the National Security and Criminal Justice Group in the Attorney-General's Department; and
- persons in the Cyber and Infrastructure Security Centre in the Department of Home Affairs.

There are no other changes to the positions, classification levels or work areas resulting from the making of the instrument.

The instrument is technical in nature, and does not affect the functions or powers of a *Communications Access Co-ordinator*, which are governed by the TIA Act and the *Telecommunications Act 1997*.

The instrument repeals the *Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2022*.

Human rights implications

The instrument makes minor changes to update references to positions that have changed as a result of a restructure of the Attorney-General's Department. The changes are minor and machinery in nature and are consistent with the original intent of the primary instrument. As a result, this Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Mark Dreyfus KC MP

Attorney-General