

EXPLANATORY STATEMENT

Telecommunications (Interception and Access) Act 1979

Telecommunications (Interception and Access) (Staff Members of Victoria Police) Declaration 2023

Legislative authority

1. The *Telecommunications (Interception and Access) (Staff Members of Victoria Police) Declaration 2023* (the Declaration) is made under section 6N of the *Telecommunications (Interception and Access) Act 1979* (the Act).
2. Under the Act, warrants may be issued to agencies to authorise interception of communications or access stored communications. The power to exercise the authority conferred by an interception or stored communications warrant may only be exercised by specific persons, including officers and staff members of an agency in relation to whom an approval is in force pursuant to subsections 55(3) and 127(2) of the Act.
3. Subsections 55(3) and 127(2) provide that the chief officer of an agency, or an officer of the agency appointed by the chief officer, may approve specific persons, including officers or staff members, or classes of officers or staff members, of the agency or another agency to exercise the authority conferred by warrants.
4. An ‘officer’ in relation to the Police Force of a State is defined as an officer of that Police Force and a ‘staff member’ in relation to the Australian Federal Police (AFP) is defined as an employee who is not a ‘member’ of the AFP. Accordingly, the chief officer of an agency may approve sworn members of the Police Force to exercise the authority conferred by warrants, as an officer of the Police Force.
5. Section 6N of the Act enables the Attorney-General to declare that members of an agency included in a specified class of members of the agency occupy positions corresponding to those of AFP employees who are not members of the AFP. The effect of such a declaration is to enable the chief officer of an agency to approve unsworn staff members of a Police Force to exercise the authority conferred by warrants.

Purpose of the Instrument

6. The purpose of the Declaration is to declare Victoria Police employees holding, or acting in, an office or position in the Special Projects Unit, Technical Projects Unit, and Investigative Support Group to be able to exercise the authority conferred by warrants.

Details of the Instrument

7. Paragraph (a) of the Declaration repeals the *Victoria Police (Staff Members) Declaration 1998*.
8. Paragraph (b) of the Declaration declares that Victoria Police employees holding, or acting in, an office or position in the Special Projects Unit, Technical Projects Unit, and Investigative Support Group occupy positions corresponding to those AFP employees who are not members of the AFP.

9. These class of members have the function of monitoring and intercepting communications, and access stored communications pursuant to warrants within Victoria Police.

Consultation

10. The Attorney-General's Department has consulted with Victoria Police about the Declaration.
11. The Office of Impact Analysis (OIA) has confirmed that a Regulatory Impact Statement is not required (Reference number: OBPR22-02862).
12. A Statement of Compatibility with Human Rights has been prepared and is attached.

Statement of Compatibility with Human Rights

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

Telecommunications (Interception and Access) (Staff Members of Victoria Police) Declaration 2023

This Disallowable Legislative Instrument (the 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 Instrument is made under section 6N of the *Telecommunications (Interception and Access) Act 1979* (the Act).

Section 6N enables the Attorney-General to declare a class of members of an agency to be staff members of that agency. The effect of the Instrument is to enable the chief officer of an agency, or an officer of the agency appointed by the chief officer, to approve staff members of the agency included in the specified class to exercise the authority conferred by interception or stored communications warrants, under subsection 55(3) and subsection 127(2) of the Act. Section 6N provides that the Attorney-General can declare that members of an agency included in a specific class of members of the agency occupy positions corresponding to those of the AFP employees who are not member of AFP.

The purpose of this Instrument is to repeal the *Victoria Police (Staff Members) Declaration 1998* (the 1998 Declaration) and replace it with a new instrument declaring Victoria Police employees holding, or acting in, an office or position in the Special Projects Unit, Technical Projects Unit, and Investigative Support Group, to enable those employees to be approved by the chief officer, or an officer appointed by the chief officer, to exercise the authority conferred by warrants issued to the agency. The 1998 Declaration provides the ability for all unsworn members of Victoria Police to exercise the authority conferred in the warrant. To ensure that law enforcement powers are exercised correctly and appropriately, the class included in this Instrument has been confined to Victoria Police employees who have roles and responsibilities relating to the exercise of authority conferred by an interception or stored communications warrant.

Human rights implications

This Disallowable Legislative Instrument engage the right to privacy contained in Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR). The Instrument provides for the ability for persons to exercise the authority conferred by an interception or stored communications warrant. Both types of warrants are intrusive in that they facilitate access to private communications and data. The objective of these warrants is to protect the rights and freedoms of individuals by providing law enforcement agencies with the resources they need to keep Australians safe.

Interference with a person's privacy or correspondence

Article 17 of the ICCPR provides that:

No one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor 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.

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’.

The effect of the Instrument is reasonable and proportionate to achieving a legitimate objective being to keep Australians safe. It achieves this by ensuring that law enforcement agencies have the necessary tools to investigate suspected breaches of the criminal law, through interception and stored communications warrants. The instrument limits the class of officers of Victoria Police who can exercise the authority conferred by the warrants issued to the agency to include only those staff members who have responsibilities relating to the exercise the authority conferred by warrants issued to the Victoria Police.

Accordingly, to the extent that the measures in the Instrument may interfere with privacy, the limitation is proportionate to the legitimate objectives of protecting public order, public safety and the rights and freedoms of others.

Conclusion

The Instrument is compatible with human rights because to the extent that the Instrument limits human rights under Article 17 of the ICCPR, those limitations are permissible because they are authorised by law and are necessary, reasonable and proportionate to achieve a legitimate objective.

THE HON MARK DREYFUS KC MP

Attorney-General