

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

Telecommunications (Interception and Access) Act 1979

Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2023

1. The instrument revokes the *Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2022 (No. 2)* (the primary instrument).
2. In addition to the power to make this instrument under subsection 6R(2) of the *Telecommunications (Interception and Access) Act 1979* (TIA Act), subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
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 law enforcement agencies, interception agencies, 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 (the department) or a person or body specified by the Attorney-General in a legislative instrument made under that section.
6. In the absence of a legislative instrument specifying a person or body, the Secretary of the Attorney-General's Department is the *Communications Access Co-ordinator*.

Consultation

7. No consultation was undertaken prior to making the instrument.

Details of the instrument

8. Section 1 sets out the name of the instrument.
9. Section 2 provides for the commencement of the instrument on the day after registration on the Federal Register of Legislation.
10. Section 3 provides that the instrument is made under section 6R(2) of the TIA Act.
11. Section 4 revokes the primary instrument.

Parliamentary scrutiny etc.

12. 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.

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 2023

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 2023* (the instrument) is made under section 6R of the *Telecommunications (Interception and Access) Act 1979* (the TIA Act). Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Under section 6R of the TIA Act, the *Communications Access Co-ordinator* is the Secretary of the Attorney-General's Department (the department) or a person or body specified by the Attorney-General in a legislative instrument under that section.

In the absence of a legislative instrument specifying a person or body, the Secretary of the Attorney-General's Department is the *Communications Access Co-ordinator*.

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

Human rights implications

The instrument does not alter or affect the functions or powers of the *Communications Access Co-ordinator* and as a result, this Disallowable Legislative Instrument does not engage any of the applicable human rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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