

## EXPLANATORY STATEMENT

Issued by authority of the Home Affairs Minister

*Telecommunications Act 1997*

### ***Telecommunications (Communications Security Coordinator) Instrument 2024***

- 1 The instrument, Departmental reference LIN 24/085, is made under subsection 7A(2) of the *Telecommunications Act 1997* (Telecommunications Act).
- 2 The instrument commences on the day after this instrument is registered, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Background***

- 3 Schedule 4 to the *Crimes and Other Legislation Amendment (Omnibus No. 1) Act 2024* amended the *Telecommunications (Interception and Access) Act 1979* and the Telecommunications Act to clarify the functions of the Communications Access Coordinator in the Attorney-General's Department and create the position of Communications Security Coordinator in the Department of Home Affairs. Schedule 4 to the *Crimes and Other Legislation Amendment (Omnibus No. 1) Act 2024* also transferred functions under Part 14 of the Telecommunications Act to the Communications Security Coordinator.
- 4 Under the new section 7A of the Telecommunications Act, the Communications Security Coordinator is the Secretary of the Department of Home Affairs or a person or body specified by the Home Affairs Minister in a legislative instrument made under that section.

#### ***Purpose and effect***

- 5 The Instrument specifies that for paragraph 7A(1)(b) of the Telecommunications Act, all APS employees in the Department of Home Affairs holding, occupying or performing the duties of a SES employee in the Cyber and Infrastructure Security Group are specified as Communications Security Coordinator. The instrument further specifies that for subsection 7A(4) of the Telecommunications Act that all of the functions and powers of a Communications Security Coordinator under a provision of the Telecommunications Act are specified to be functions and powers that may be performed by a person specified as Communications Security Coordinator.

#### ***Consultation***

- 6 No consultation occurred prior to making this instrument. This is because the act of specifying Communications Security Coordinator is technical in nature and the functions of the Communications Security Coordinator were consulted during the development of the Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024.
- 7 The Office of Impact Analysis (OIA) was consulted and considered that the instrument dealt with matters of a machinery nature and no regulatory impact statement was required. The OIA reference number is OIA24-08529.

#### ***Details of the instrument***

- 8 Section 1 sets out the name of the instrument.

- 9 Section 2 provides for the commencement of the instrument. The instrument commences the later of the day after registration on the Federal Register of Legislation and the day Schedule 4 of the *Crimes and Other Legislation Amendment (Omnibus No. 1) Act 2024*.
- 10 Section 3 provides that the instrument is made under subsection 7A(2) of the Telecommunications Act.
- 11 Section 4 provides definitions relied upon within the instrument. The note to section 4 provides that a number of expressions used in this instrument are defined in section 7 of the Telecommunications Act, including the Communications Security Coordinator; Home Affairs Department; and Home Affairs Minister.
- 12 Section 7 of the Telecommunications Act provides that Communications Security Coordinator has the same meaning given by section 7A of the Telecommunications Act. Subsection 7A(1) provides that the Communications Security Coordinator means the Home Affairs Secretary or a person or body covered by an instrument made by the Home Affairs Minister under subsection 7A(2). Subsection 7A(2) provides that the Home Affairs Minister may, by legislative instrument, specify one or more persons or bodies, or one or more classes of persons or bodies, for the purposes of paragraph (b) of the definition of Communications Security Coordinator in subsection 7A(1).
- 13 Section 7 of the Telecommunications Act defines the Home Affairs Department to mean the Department administered by the Home Affairs Minister. Section 7 defines the Home Affairs Minister to mean the Minister administering the *Security of Critical Infrastructure Act 2018*.
- 14 Also defined in section 4 of the instrument is *Act* which means the *Telecommunications Act 1997*, *APS employee* which has the meaning given by the *Public Service Act 1999*, *Cyber and Infrastructure Security Group* means the Group of the same name in the Home Affairs Department and *SES employee* which has the meaning given by the *Public Service Act 1999*.
- 15 Subsection 5(1) specifies that for paragraph 7A(1)(b) of the Telecommunications Act all APS employees in the Department of Home Affairs holding, occupying or performing the duties of a SES employee in the Cyber and Infrastructure Security Group are specified as Communications Security Coordinator.
- 16 Subsection 5(2) specifies that for subsection 7A(4) of the Telecommunications Act that all of the functions and powers of a Communications Security Coordinator under a provision of the Telecommunications Act are specified to be functions and powers that may be performed by a person specified as Communications Security Coordinator.
- 17 As the CSC performs the everyday regulatory function for the telecommunications sector, it is appropriate that the role of CSC be delegated to SES employees in the CISG. Assessing individual notifications would likely place undue burden on the Secretary and potentially lead to delays in responding to notifications within the specified statutory timeframes.
- 18 The Instrument will restore the efficient administration of obligations which ensure the integrity and security of telecommunications networks.

***Parliamentary scrutiny etc.***

- 19 The instrument is subject to disallowance under section 42 of the Legislation Act. The instrument does not alter or affect the functions or powers of the Communications Security Coordinator 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*. The Statement is included at Attachment A to this explanatory statement.
- 20 The instrument was made by the Home Affairs Minister, in accordance with subsection 7A of the Telecommunications Act.

**Statement of Compatibility with Human Rights**

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

***Telecommunications (Communications Security Coordinator) Instrument 2024***

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 (Communications Security Coordinator) Instrument 2024* (the instrument) is made under subsection 7A(2) of the *Telecommunications Act 1997* (Telecommunications Act).

Under subsection 7A(2) of the Telecommunications Act, the *Communications Security Coordinator* is the Secretary of the Home Affairs Department or a person or body specified by the Home Affairs Minister in a legislative instrument under that section.

This Disallowable Legislative Instrument prescribes that for the purposes of subsection 7A(2) of the Telecommunications Act, employees in the Department of Home Affairs holding, occupying or performing the duties of an SES employee in the Cyber and Infrastructure Security Group are specified as the Communications Security Coordinator. For the purposes of subsection 7A(4) of the Telecommunications Act, all the functions and powers of a Communications Security Coordinator under the Telecommunications Act are specified as powers and functions that a prescribed person may perform or exercise.

In the absence of a legislative instrument specifying a person or body, the Secretary of the Home Affairs Department is the *Communications Security Coordinator*.

The instrument is technical in nature, and does not affect the functions or powers of the *Communications Security Coordinator*, which are governed by the Telecommunications Act.

**Human rights implications**

The 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.