Telecommunications Amendment (Integrated Public Number Database) Bill 2006

No. , 2006

(Communications, Information Technology and the Arts)

A Bill for an Act to amend the *Telecommunications Act 1997*, and for related purposes
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Schedule 1—Amendments 3

*Telecommunications Act 1997* 3
A Bill for an Act to amend the *Telecommunications Act 1997*, and for related purposes

The Parliament of Australia enacts:

1. **Short title**

   This Act may be cited as the *Telecommunications Amendment (Integrated Public Number Database) Act 2006*.

2. **Commencement**

   (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
### Commencement information

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<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
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<td>A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</td>
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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments

Telecommunications Act 1997

1 Section 7 (after paragraph (h) of the definition of civil penalty provision)

   Insert:

   (i) subsection 295S(3); or

2 Section 7

   Insert:

   \textit{integrated public number database scheme} means the scheme in force under section 295A.

3 Subsection 285(1)

   Repeal the subsection, substitute:

   \textit{Permitted uses}

   (1) Sections 276 and 277 do not prohibit a use by a person of information or a document if:

   (a) the information or document relates to information (other than information relating to an unlisted telephone number) contained in an integrated public number database; and

   (b) the information or document relates to:

      (i) carriage services supplied, or intended to be supplied, to another person by a carrier or carriage service provider; or

      (ii) the affairs or personal particulars of another person (other than an address relating to an unlisted telephone number); and

   (c) the use is made for purposes connected with:

      (i) the provision of directory assistance services by or on behalf of a carriage service provider; or

      (ii) the publication and maintenance of a public number directory; or
(iii) dealing with the matter or matters raised by a call to an emergency service number.

Permitted disclosures

(1A) Sections 276 and 277 do not prohibit a disclosure by a person of information or a document if:

(a) the information or document relates to information (other than information relating to an unlisted telephone number) contained in an integrated public number database; and

(b) the information or document relates to:

(i) carriage services supplied, or intended to be supplied, to another person by a carrier or carriage service provider; or

(ii) the affairs or personal particulars of another person (other than an address relating to an unlisted telephone number); and

(c) the disclosure is made to another person for purposes connected with:

(i) the provision of directory assistance services by or on behalf of a carriage service provider; or

(ii) the publication and maintenance of a public number directory; or

(iii) dealing with the matter or matters raised by a call to an emergency service number; or

(iv) the conduct of research of a kind specified in an instrument under subsection (3); and

(d) if the disclosure to the other person is for a purpose covered by subparagraph (c)(ii) or (iv)—the other person holds an authorisation in force under the integrated public number database scheme permitting the other person to use and disclose the information or document.

4 Subsection 285(2)

Insert:

business includes a venture or concern in trade or commerce, whether or not conducted on a regular, repetitive or continuous basis.

Note: The following heading to subsection 285(2) is inserted “Definitions”.

4 Telecommunications Amendment (Integrated Public Number Database) Bill 2006 No. 1, 2006
5 Subsection 285(2)

Insert:

*educational institution* includes:

(a) a pre-school; and

(b) a school; and

(c) a college; and

(d) a university.

6 Subsection 285(2)

Insert:

*public number directory* means a record:

(a) that contains either or both of the following:

(i) the names of persons and their public numbers (whether or not it also contains their addresses);

(ii) the names of bodies and their public numbers (whether or not it also contains their addresses); and

(b) that, in relation to a person or body that is not a qualifying entity, contains no other information about the person or body; and

(c) that, in relation to a person or body that is a qualifying entity, contains no other information about the person or body apart from information:

(i) that is of a kind specified in an instrument under subsection (4); and

(ii) that is applicable in relation to the person or body; and

(d) that:

(i) does not enable a person who only knows the public number of an end-user of a carriage service to readily identify the end-user’s name and/or address; and

(ii) does not enable a person who only knows the whole or a part of the address of an end-user of a carriage service to readily identify the end-user’s name and/or public number; and

(e) that satisfies each requirement specified in an instrument under subsection (5).

7 Subsection 285(2)
Insert:

*qualifying entity* means:

(a) a person or body carrying on a business; or
(b) a charity or charitable institution; or
(c) an educational institution; or
(d) a religious organisation; or
(e) a department of the Commonwealth, a State or a Territory; or
(f) an agency, authority or instrumentality of the Commonwealth, a State or a Territory; or
(g) any other person or body of a kind specified in an instrument under subsection (6).

8 At the end of section 285

Add:

*Research*

(3) The Minister may, by legislative instrument, specify kinds of research for the purposes of subparagraph (1A)(c)(iv). The Minister must not specify a kind of research unless the Minister is satisfied that the kind of research is in the public interest.

*Additional information in public number directory*

(4) The Minister may, by legislative instrument, specify kinds of information for the purposes of subparagraph (c)(i) of the definition of *public number directory* in subsection (2). The Minister may specify different kinds of information in relation to different kinds of qualifying entities.

*Further requirements for public number directory*

(5) The Minister may, by legislative instrument, specify requirements for the purposes of paragraph (e) of the definition of *public number directory* in subsection (2).

*Qualifying entities*

(6) The Minister may, by legislative instrument, specify kinds of persons or bodies for the purposes of paragraph (g) of the definition of *qualifying entity* in subsection (2).
9 After Division 3 of Part 13

Insert:

Division 3A—Integrated public number database authorisations

Subdivision A—ACMA scheme for the granting of authorisations

295A ACMA to make integrated public number database scheme

The ACMA must, by legislative instrument, make a scheme (the integrated public number database scheme) for the granting of authorisations for the purposes of paragraph 285(1A)(d).

Note 1: The ACMA may make determinations fixing charges for any matter in relation to which expenses are incurred by the ACMA under the scheme: see section 60 of the Australian Communications and Media Authority Act 2005.

Note 2: Various decisions under the scheme are reviewable: see section 555 and paragraphs 1(ma) to (md) of Schedule 4.

295B Scheme must deal with certain matters

(1) The scheme must make provision for and in relation to the following matters:

(a) the making of applications for authorisations;
(b) the assessment of applications;
(c) the period for which authorisations are to be in force;
(d) the notification of decisions under the scheme (including to the person who maintains the integrated public number database referred to in paragraph 285(1A)(a)).

(2) The scheme must require an applicant for an authorisation to specify the purpose for which the authorisation is sought.

Note: The relevant purposes are purposes connected with the publication and maintenance of a public number directory or with the conduct of particular research.
Schedule 1 Amendments

295C Applications may be treated differently

The scheme may make different provision for different kinds of authorisation applications.

295D Scope of authorisations

The scheme may make provision for authorisations to be in respect of:

(a) all information or documents that satisfy the matters referred to in paragraphs 285(1A)(a) and (b); or

(b) specified information or specified documents that satisfy those matters.

295E Provisional and final authorisations

The scheme may make provision for provisional authorisations and final authorisations.

295F Conditions

The scheme may make provision for the imposition of conditions on the grant of authorisations.

Note 1: Section 295P also allows the Minister to determine that authorisations are granted subject to conditions.

Note 2: Section 295R creates an offence for breaching a condition of an authorisation.

295G Varying or revoking authorisations

The scheme may make provision for the variation or revocation of authorisations. For example, the variation may be the imposition of new conditions or the variation or removal of existing conditions.

295H Scheme may confer administrative powers on the ACMA

The scheme may make provision for or in relation to a particular matter by empowering the ACMA to make decisions of an administrative character.

Note: Sections 50 and 51 of the Australian Communications and Media Authority Act 2005 deal with the delegation of the ACMA’s powers.
295J Ancillary or incidental provisions

The scheme may contain such ancillary or incidental provisions as the ACMA considers appropriate.

295K Scheme-making power not limited

Sections 295B to 295J do not, by implication, limit section 295A.

295L Variation of scheme

(1) The scheme may be varied, but not revoked, in accordance with subsection 33(3) of the Acts Interpretation Act 1901.

(2) Subsection (1) does not limit the application of subsection 33(3) of the Acts Interpretation Act 1901 to other instruments under this Act.

295M Consultation

Making the scheme

(1) Before making the scheme, the ACMA:

(a) must consult the Privacy Commissioner and have regard to any submissions made by the Privacy Commissioner because of that consultation; and

(b) must consult the Secretary of the Department that is administered by the Minister administering the Privacy Act 1988 and have regard to any submissions made by that Secretary because of that consultation; and

(c) may consult such other persons as the ACMA considers appropriate and have regard to any submissions made by those persons because of that consultation.

Decisions under the scheme

(2) Before making a decision under the scheme, the ACMA may consult such persons as the ACMA considers appropriate and have regard to any submissions made by those persons because of that consultation.
Subdivision B—Ministerial instruments

295N Criteria for deciding authorisation applications

(1) The Minister must, by legislative instrument, specify criteria for deciding authorisation applications made under the integrated public number database scheme.

(2) The Minister may specify different criteria for different kinds of authorisation applications.

(3) In deciding an authorisation application, the ACMA:
   (a) must apply the criteria applicable to that application; and
   (b) may have regard to any other matters that it thinks are relevant.

295P Conditions

(1) The Minister may, by legislative instrument, do either or both of the following:
   (a) determine that all authorisations under the integrated public number database scheme are granted subject to specified conditions;
   (b) determine that a specified kind of authorisation under that scheme is granted subject to specified conditions.

(2) An authorisation under that scheme is granted subject to any condition specified in an instrument under this section that is applicable to that authorisation.

Note 1: An authorisation may also be granted subject to conditions imposed in accordance with that scheme: see section 295F.

Note 2: Section 295R creates an offence for breaching a condition of an authorisation.

295Q Other reviewable decisions

The Minister may, by legislative instrument, specify decisions under the integrated public number database scheme for the purposes of paragraph 1(md) of Schedule 4.
Subdivision C—Enforcing compliance with conditions of authorisations

295R Offence of breaching a condition

A person commits an offence if:

(a) the person is the holder of an authorisation under the integrated public number database scheme; and
(b) the person does an act or omits to do an act; and
(c) the act or omission breaches a condition of the authorisation.

Penalty: 60 penalty units.

295S Remedial directions for breaching a condition

(1) This section applies if the ACMA is satisfied that a person has contravened, or is contravening, a condition of an authorisation in force under the integrated public number database scheme.

(2) The ACMA may give the person a written direction requiring the person to take specified action directed towards ensuring that the person does not contravene the condition, or is unlikely to contravene the condition, in the future.

(3) A person must not contravene a direction under subsection (2).

(4) Subsection (3) is a civil penalty provision.

Note: Part 31 provides for pecuniary penalties for breaches of civil penalty provisions.

(5) A direction given under subsection (2) is not a legislative instrument.

295T Formal warnings for breaching a condition

The ACMA may issue a formal warning if the ACMA is satisfied that a person has contravened, or is contravening, a condition of an authorisation in force under the integrated public number database scheme.
Subdivision D—Report to Minister

295U Report to Minister

(1) At the time the ACMA gives the Minister a report under section 57 of the Australian Communications and Media Authority Act 2005, the ACMA must give the Minister a separate report on the following matters:
   (a) the compliance by persons with authorisations granted under the integrated public number database scheme;
   (b) any other matter relating to the operation of that scheme that the ACMA considers appropriate.

(2) The ACMA is not required to include in the separate report any material:
   (a) that is of a confidential nature; or
   (b) the disclosure of which is likely to prejudice the fair trial of a person.

(3) The Minister must cause a copy of the separate report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the separate report.

10 After section 299

Insert:

299A Integrated public number database

Public number directory

(1) If:
   (a) information or a document is disclosed to a person as permitted by subsection 285(1A); and
   (b) the disclosure is for a purpose covered by subparagraph 285(1A)(c)(ii);
then:
   (c) during the period the person holds an authorisation in force under the integrated public number database scheme in relation to the information or document—the person must not
disclose or use the information or document except for that purpose; and
(d) if the person does not hold such an authorisation—the person must not disclose or use the information or document.

Research

(2) If:
(a) information or a document is disclosed to a person as permitted by subsection 285(1A); and
(b) the disclosure is for a purpose covered by subparagraph 285(1A)(c)(iv);
then:
(c) during the period the person holds an authorisation in force under the integrated public number database scheme in relation to the information or document—the person must not disclose or use the information or document except for that purpose; and
(d) if the person does not hold such an authorisation—the person must not disclose or use the information or document.

(3) If information or a document is disclosed to a person for a particular purpose as permitted by subsection (2) or this subsection, the person must not disclose or use the information or document except for that purpose.

11 After paragraph 1(m) of Schedule 4

Insert:

(ma) a decision under the integrated public number database scheme to refuse to grant a person an authorisation;
(mb) a decision under the integrated public number database scheme to impose conditions on the grant of an authorisation;
(mc) a decision under the integrated public number database scheme to vary or revoke an authorisation;
(md) a decision under the integrated public number database scheme specified in an instrument under section 295Q;

12 Transitional

(1) This item applies if:
(a) before the commencement of this item, information or a
document was disclosed to a person as permitted by
section 285 of the Telecommunications Act 1997; and
(b) the disclosure was for a purpose covered by subparagraph
285(1)(c)(ii) of that Act.

(2) During the exemption period, the person is taken, in relation to any
disclosure to the person:
(a) of information or a document that satisfies paragraphs
285(1A)(a) and (b) of that Act; and
(b) that is for a purpose covered by subparagraph 285(1A)(c)(ii)
of that Act;
to hold an authorisation in force under the integrated public number
database scheme permitting the person to use and disclose the
information or document.

(3) If:
(a) within the exemption period, the person makes an
authorisation application under that scheme; and
(b) the purpose for which the authorisation is sought is a purpose
covered by subparagraph 285(1A)(c)(ii) of that Act;
then, until the ACMA makes a decision on the application, the person is
taken, in relation to any disclosure to the person:
(c) of information or a document that satisfies paragraphs
285(1A)(a) and (b) of that Act; and
(d) that is for the purpose for which the authorisation is sought;
to hold an authorisation in force under that scheme permitting the
person to use and disclose the information or document.

(4) In this item:
exemption period means the period of 28 days beginning on the day on
which this item commences.
integrated public number database scheme means the scheme in force