

Explanatory Statement
Issued by the Authority of the Attorney-General

Telecommunications (Interception and Access) Act 1979

***Telecommunications (Interception and Access)
(Emergency Service Facilities – Tasmania) Instrument 2012***

The *Telecommunications (Interception and Access) Act 1979* (the Act) establishes a general prohibition against the interception of communications passing over a telecommunications system. The purpose of the *Telecommunications (Interception and Access) (Emergency Service Facilities – Tasmania) Instrument 2012* (the Instrument), is to ensure that listening to or recording calls to and from a declared emergency service facility is not an interception for the purposes of the Act.

Subsection 6(2F) of the Act provides that a person who is lawfully engaged in duties relating to the receiving and handling of communications to or from an ‘emergency service facility’ may listen to or record the communications without contravening the general prohibition against interception. Subsection 6(2B) of the Act requires that the Minister must be satisfied that the premises are operated by one of the listed forces or services to enable that force or service, or another force or service, to deal with a request for assistance in an emergency.

This exception only applies to emergency services facilities that are declared by the Minister pursuant to subsection 6(2B) of the Act. The *Telecommunications (Interception and Access) (Emergency Service Facilities – Tasmania) Declaration 2012* (the Declaration) is made under subsection 6(2B) of the Act. The Attorney-General, as Minister, is satisfied that the operations at these facilities meet the requirements of subsection 6(2B) of the Act as a State or ACT police, fire or ambulance service, or a service for despatching, or referring matters for the attention of those services.

To protect against the publication of the location of the facilities, which are critical infrastructure, a declaration under subsection 6(2B) of the Act is not classified as a legislative instrument.

To maintain Parliamentary scrutiny of the declarations, subsection 6(2D) of the Act provides that the Minister must, by legislative instrument, specify the name of the force or service operating the premises to which the declaration relates, and the geographical region in which those premises are located. The Instrument is made under subsection 6(2D) of the Act. The Instrument replaces the previous Instrument, and adds new emergency service facilities operated by Airservices Australia’s Aviation Rescue and Fire Fighting Service in the geographic regions listed on the Instrument.

Airservices Australia and the Office of Legislative Drafting and Publishing were consulted on the Declaration and Instrument.

The Instrument commences on the day after it is registered.

Statement of Compatibility with Human Rights

This 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*. The Act prohibits the interception of communications without the knowledge of the parties. The purpose of the Instrument is to ensure that listening to or recording calls to and from a declared emergency service facility is not an interception for the purposes of the Act.

Human rights implications

Right to privacy

Despite the general prohibition on the interception of communications without the knowledge of parties, facilitating the listening to and recording emergency calls made to police, fire and ambulance services under subsection 6(2F) of the TIA is compatible with Article 17 of the International Covenant on Civil and Political Rights. Article 17 prohibits unlawful or arbitrary interferences with a person's privacy, and provides that everyone has the right to the protection of the law against such interference or attacks. The right to privacy will particularly be engaged when personal information is collected, stored, used, and disclosed. This right may be limited if the limitations are for a legitimate objective, including the protection of the right to life which includes positive obligations to protect life.

The measures in the Instrument are necessary to protect the right to life by ensuring that emergency services are able to assist an emergency caller and respond to an emergency situation as quickly as possible, without the requirement to first obtain a caller's consent to recording of the call.

The Instrument is subject to a number of safeguards, including:

- the exception for recording calls to and from a declared emergency service facilities applies only if the Attorney-General is satisfied that the premises are operated by a police, fire or ambulance service of a State or of the Australian Capital Territory, or a service for despatching or referring matters for the attention of such services, and
- the emergency service facility exception is subject to the requirement in subsection 6(2G) to ensure signs are clearly visible at each entrance to the facility and notifying persons that communications to or from the facility may be listened to or recorded. As an additional safeguard, only those premises which handle emergency calls are listed.

In addition, the location of emergency service facilities is protected as critical infrastructure information. This information is contained in the Attorney-General's declaration under subsection 6(2B) of the Act, which is not classified as a legislative instrument and is not made public. The information is stored in appropriately classified containers by the Australian Government. This Instrument specifies only the name of the force or service operating the premises to which the declaration relates, and the geographical region in which those premises are located.

Conclusion

The Instrument is compatible with human rights because it advances the protection of human rights and to the extent that it limits human rights, those limitations are authorised by law, reasonable and proportionate.