

EXPLANATORY STATEMENT

Telecommunications Act 1997

Telecommunications (Integrated Public Number Database – Public Number Directory Requirements) Instrument 2017

Issued by the Authority of the Minister for Communications

The *Telecommunications (Integrated Public Number Database – Public Number Directory Requirements) Instrument 2017* (the Instrument) specifies requirements which must be satisfied if a directory product is to be considered a public number directory for the purposes of the definition of that term in subsection 285(2) of the *Telecommunications Act 1997* (the Telecommunications Act).

The instrument repeals and replaces the *Telecommunications (Integrated Public Number Database – Public Number Directory Requirements) Instrument 2007 (No. 1)* (the 2007 Instrument) which is due to sunset on 1 October 2017, under Part 6 of the *Legislation Act 2003* (the Legislation Act). Following review, it was determined that the provisions contained within the 2007 Instrument were operating effectively and efficiently, and continued to form a necessary and useful part of the regulatory framework.

Context and purposes of the Instrument

The Integrated Public Number Database (the IPND) is an industry-wide database of public telephone numbers (both listed and unlisted) in use and associated customer information including name and address information. It also includes information such as whether the number or address is to be listed in a public number directory and whether the number is used for residential, business, government or charitable purposes.

The IPND is established and maintained by Telstra Corporation Limited (Telstra) as a condition of its carrier licence. All carriage service providers who supply carriage services to customers who have public numbers are obliged to provide customer information to Telstra for inclusion in the IPND.

Information in the IPND can be accessed by persons to publish public number directories and for certain authorised research purposes.

Under section 295A of the Telecommunications Act, the Australian Communications and Media Authority (ACMA) must make a scheme for the granting of authorisations to access the IPND for the purposes of paragraph 285(1A)(d) of the Telecommunications Act (the IPND Scheme). Those purposes are the publication and maintenance of a public number directory, both online and printed directories, and the conduct of research of a kind specified in a legislative instrument, by the Minister, where the Minister is satisfied that the kind of research is in the public interest.

The ACMA will assess whether a directory product meets the definition of public number directory contained in subsection 285(2) of the Telecommunications Act when considering applications for access to the information in the IPND for the purpose of publishing and maintaining a public number directory under the IPND Scheme.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required on the basis that the Instrument replaces an instrument that is sunseting, (the 2007 Instrument).

Statement of compatibility with human rights

A statement of compatibility is set out at Attachment A.

Consultation

The Instrument has been updated in consultation with the ACMA and current users of the IPND. The then Department of Communications completed a review of the IPND in 2015 which identified the need to retain the current IPND. The review involved public consultation, and the report is available on the department's website.

Legislative basis

The Instrument is made under subsection 285(5) of the Telecommunications Act, which allows the Minister, by legislative instrument, to specify requirements for the purposes of paragraph (e) of the definition of public number directory in subsection 285(2) of the Telecommunications Act.

Section 285(2) of the Telecommunications Act contains the definition of 'public number directory'. Paragraph (e) of the definition provides that a public number directory is a record that satisfies each requirement specified in a legislative instrument under subsection 285(5).

The Instrument is a legislative instrument for the purposes of the Legislation Act (see section 8 of that Act).

NOTES ON CLAUSES

Section 1 – Name

Section 1 provides that the name of the Instrument is the *Telecommunications (Integrated Public Number Database – Public Number Directory Requirements) Instrument 2017*.

Section 2 – Commencement

Section 2 provides that the Instrument commences on the day after the Instrument is registered.

Section 3 – Authority

Section 3 provides that the Instrument is made under section 285(5) of the *Telecommunications Act 1997* (the Telecommunications Act) which provides that the Minister may specify additional requirements for a directory product to be classified as a public number directory.

Section 4 – Definitions

Section 4 provides definitions of terms used in the Instrument.

The term *Act* is defined to mean the *Telecommunications Act 1997*.

Carriage service provider is defined to have the meaning given by section 87 of the Act.

Classified business directory is defined to mean a public number directory that does not contain information about residential telephone subscribers unless a residential telephone subscriber has agreed with the public number directory publisher that information about the subscriber will be included in the directory (for example, where the public number of the residential telephone subscriber is also used for business purposes). There is a note under the definition providing an example of such a directory, being the Yellow Pages® and other specialist trade directories.

The term *customer* is defined to include the nominee of a customer.

Integrated public number database is defined to have the meaning given by subsection 285(2) of the Act.

Integrated public number database scheme is defined to mean the scheme in force under section 295A of the Act.

Listed number is defined to mean a public number that the customer of a carriage service provider and the provider have agreed to have included in a public number directory, as indicated by the ‘List Code’ in the integrated public number database.

Public number is defined to have the meaning given by subsection 285(2) of the Act.

Public number directory is defined to have the meaning given by subsection 285(2) of the Act.

Public number directory authorisation is defined to have the same meaning as in the *Telecommunications (Integrated Public Number Database Scheme – Conditions for Authorisations) Determination 2017*.

Public number directory publisher is defined to mean a holder of a public number directory authorisation issued under the integrated public number database scheme.

Section 5 – Schedules

Section 5 provides that each instrument that is specified in Schedule 1 is repealed as set out in the Schedule.

Section 6 – Specification

Section 6 specifies requirements which must be satisfied if a directory product is to be characterised as a public number directory. These requirements are in addition to those specified in paragraphs (a) to (d) of the definition of public number directory in the Telecommunications Act.

Paragraph 6(a) specifies that a public number directory must contain no fewer than 1000 entries. The purpose of this is to protect an individual's privacy by ensuring that a public number directory cannot be produced that would easily allow a person looking through the directory to identify an individual by simply scanning through the directory and cross-matching a number to a name and an address. A directory covering a single postcode where there are only 60 people in the postcode (as is the case with some postcodes) would be easily searchable in this manner. It is considered that a minimum of 1000 entries would reduce the ability of a person to easily undertake this type of search.

Paragraph 6(b) specifies that entries in a public number directory must not be disaggregated below postcode level. This provision has a similar rationale to paragraph 6(a) and they will work in conjunction. While paragraph 6(b) requires that public number directories must be produced at postcode level or above, if a directory based on a single postcode would contain fewer than 1000 entries then paragraph 6(a) will apply and the directory must therefore cover a sufficient number of postcodes for the number of entries in the directory to total 1000 or more.

Paragraph 6(c) requires that a public number directory that is not a classified business directory must contain all listed numbers in the relevant geographical area that the directory covers (for example, all listed numbers in a postcode). The intention of paragraph 6(c) is to prevent a directory being produced that contains, for example, only particular groups of residents for particular purposes. For example a public number directory should not identify debtors for debt collection purposes or persons with a particular level of income for marketing purposes.

Paragraph 6(d) requires that a public number directory that is not a classified business directory must be organised alphabetically by name, according to standard industry practice. The rationale for this is similar to that of paragraph 6(c) in that it will prevent public number directories being organised on the basis of other principles such as income level, consumer preferences or debtor status. The reference to ‘standard industry practice’ is intended to deal with situations where standard industry practice means that some names are not listed in a strictly alphabetical fashion in a public number directory, for example, where names starting with ‘Mc’ or ‘Mac’ are listed at the front of the ‘M’ section of the directory.

The intention of the requirements in paragraphs 6(e), 6(f) and 6(g) is to protect the integrity of information in public number directories by making it more difficult to undertake the large-scale, electronic removal of information from directories to produce databases that may be used for other purposes.

The policy rationale for the production and publication of public number directories is to enable the user of a standard telephone service to contact the user of another standard telephone service.

Technology has evolved since 1997, when the regime permitting access to the IPND for the publication and maintenance of public number directories was first developed, and now enables much greater manipulation of electronic information. Scraping technologies enable the fast and easy removal of information from electronic directories for the compilation of secondary databases which may be used for purposes far removed from the original purpose for which the information was collected, and without the consent of the person listed in the directory, for example, for the compilation of population databases which are used to create consumer profiles and segments for marketing purposes.

Telecommunications customers provide their personal information to their telecommunications provider to enable the provider to connect the customer to, and bill them for, a telecommunications service. While customers may be aware that their personal information will be published in telephone directories, it is important to protect the integrity of personal information when it is published in this form so that it cannot be easily stripped out *en masse* and used for other purposes that they may not be aware of.

Previously, organisations wishing to compile their own databases from public number directories would have had to manually enter the information from print directories, a more expensive and time consuming, and therefore less attractive, process.

Paragraph 6(e) requires that no more than 20 entries may be transferred from an electronic public number directory in a single action. Paragraph 6(f) requires that no more than 100 entries may be generated from a single search of a public number directory that is in electronic form.

Paragraph 6(g) requires that a public number directory published in electronic form must be encrypted or otherwise electronically protected in order to prevent wholesale copying.

The note under section 6 provides that an example of a way a record may be transferred is the cutting or copying, and pasting of information from a public number directory.

Schedule 1 – Repeals

Schedule 1 repeals the Telecommunications (Integrated Public Number Database – Public Number Directory Requirements) Instrument 2007 (No. 1) which is due to sunset on 1 October 2017 so that it can be replaced with this Instrument.

Statement of Compatibility with Human Rights

Prepared in accordance with subsection 9(1) of the Human Rights (Parliamentary Scrutiny) Act 2011

Telecommunications (Integrated Public Number Database – Public Number Directory Requirements) Instrument 2017

Overview of the Instrument

The *Telecommunications (Integrated Public Number Database – Public Number Directory Requirements) Instrument 2017* (the Instrument) specifies requirements which must be satisfied if a directory product is to be considered a public number directory for the purposes of the definition of that term in subsection 285(2) of the *Telecommunications Act 1997* (the Telecommunications Act).

Section 6 specifies requirements which must be satisfied if a directory product is to be characterised as a public number directory. This includes a requirement that a public number directory must contain no fewer than 1000 entries and a requirement that entries must not be disaggregated below postcode level. The purpose of this is to protect an individual's privacy by ensuring that a public number directory cannot be produced that would easily allow a person looking through the directory to identify an individual by simply visually scanning through the directory until they found the entry they were looking for, or by searching by a number or an address.

Human rights implications

It has been assessed whether the Instrument is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the Instrument and the nature of the applicable rights and freedoms, it has been determined that the Instrument engages the right to privacy in Article 17 of the *International Covenant on Civil and Political Rights* (the ICCPR).

Right to privacy

Article 17 of the ICCPR provides:

- 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- 2. Everyone has the right to the protection of the law against such interference or attacks.*

Collecting, using, storing, disclosing or publishing personal information amounts to an interference with privacy. In order for the interference with privacy not to be ‘arbitrary’, 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. Reasonableness, in this context, incorporates notions of proportionality, appropriateness and necessity.

In authorising access to the IPND, the ACMA must assure itself that IPND information will be used for the purpose set out in the Telecommunications Act, and that applicants, if granted an authorisation, will comply with the Telecommunications Act and any legislative instruments, including the IPND Scheme and conditions of authorisation.

The definition of public number directory in subsection 285(2) of the Telecommunications Act states that public number directories may only contain the name, listed public number and, optionally, address of a person or body. While this has the effect of protecting the privacy of individuals, it also excludes additional information, such as email addresses, opening hours and business category, for businesses and other entities from being included in a public number directory.

Under the Instrument, information in the IPND is protected by making it more difficult to undertake large-scale, electronic removal of information from directories to produce database that may be used for other purpose. By limiting the number of entries that may be transferred from an electronic public number directory in a single action, in addition to requiring encryption of electronic directories, this data is further protected.

These protections require IPND information to be used only for strictly prescribed purposes and in defined circumstances. To the extent that the measures in the Instrument limit the right to privacy, they are lawful and non-arbitrary.

Conclusion

The Instrument is compatible with human rights. To the extent that it limits any human rights, those impacts are reasonable, necessary and proportionate.