

EXPLANATORY STATEMENT

Telecommunications Act 1997

Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017

Issued by the Authority of the Minister for Communications

The *Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017* (the Instrument) specifies kinds of research for the conduct of which access to information in the Integrated Public Number Database (the IPND) may be permitted. The specified kinds of research are those the Minister considers to be in the public interest. Persons wishing to seek access to information in the IPND to conduct permitted research must apply to the Australian Communications and Media Authority (the ACMA) for an authorisation under the *Telecommunications Integrated Public Number Database Scheme 2017* (the IPND Scheme).

The Instrument repeals and replaces the *Telecommunications (Integrated Public Number Database – Permitted Research Purposes) 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 IPND is an industry-wide database of all 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 which 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 1997* (the Telecommunications Act), the ACMA must make a scheme (the IPND Scheme) for the granting of authorisations to access the IPND for the purposes of paragraph 285(1A)(d) of the Telecommunications Act. 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. This Instrument specifies types of research for this purpose.

Following a review by the ACMA in 2016, the IPND Scheme was amended to enable the ACMA to grant research authorisations on an ongoing basis, and authorise a research body to disclose de-identified IPND data to its members for permitted research purposes provided certain requirements are met.

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 sunsetting, 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(3) of the Telecommunications Act, which allows the Minister to specify kinds of research for the purposes of subparagraph (1A)(c)(iv) and specifies that the Minister must not specify a kind of research unless the Minister is satisfied that the kind of research is in the public interest.

The Instrument is a legislative instrument for the purposes of section 8 of the Legislation Act.

NOTES ON CLAUSES

Section 1 – Name

Section 1 provides that the name of the legislative Instrument is the *Telecommunications (Integrated Public Number Database – Permitted Research Purposes) 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(3) of the Telecommunications Act which provides that the Minister may specify kinds of research for which IPND information and documents may be disclosed.

Section 4 – Definitions

Section 4 provides definitions of terms used in the Instrument.

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

The term *candidate* is defined to mean a person who has been nominated as a candidate under the *Commonwealth Electoral Act 1918*, or under a law of a State or Territory that deals with electoral matters.

Commonwealth entity is defined to have the meaning given by section 10 of the *Public Governance, Performance and Accountability Act 2013*.

Electoral matter is defined to mean a matter which is intended or likely to affect voting in:

- an election under a law of the Commonwealth, or a law of a State or Territory, relating to elections to a Parliament or to a local government authority; or
- a referendum under a law of the Commonwealth or a law of a State or Territory.

Local government authority is defined to mean a local governing body established by or under a law of a State or a Territory.

The term *Parliament* is defined to mean the Parliament of the Commonwealth, a State Parliament, or the legislature of a Territory.

Political representative is defined to mean a member of a Parliament, or a councillor (however described) of a local government authority.

Registered political party is defined to mean a political party, or a branch or division of a political party, that is registered under the *Commonwealth Electoral Act 1918* or under a law

of a State or Territory that deals with electoral matters and provides for the registration of political parties.

The term *territory* does not include the Territory of Norfolk Island.

Section 5 – Schedules

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

Section 6 – Specification

Section 6 provides for certain kinds of research to be specified as research purposes for which access to IPND information may be permitted. The intention of permitting disclosure and use of IPND information for these specified research purposes is to recognise the value of the IPND as an accurate and up-to-date source of information that may assist researchers in producing quality research that will be of benefit to the public.

The Instrument specifies that the research conducted under any of these specified kinds of research must not be for a primarily commercial purpose. It is intended that the purpose of the research project itself, that is, the purpose to which the research findings will be put, must not be primarily commercial. It is not intended to prevent the person conducting the research from doing so on commercial terms.

Use of the term ‘primarily’ is intended to permit some types of research, including health and medical research, which are in the public interest but which may have some commercial application in the future. This may not be possible if the qualifying term ‘primarily’ is not used. Use of this term is not intended to permit commercial businesses, for example pharmaceutical companies, accessing IPND information to conduct research which has the primary purpose of developing a drug or other product or service for sale for commercial gain.

Paragraph 6(a) specifies research, or the compilation or analysis of statistics, relevant to public health, including epidemiological research. This category of research is intended to permit access to information in the IPND to conduct health and medical research. The terminology reflects similar terminology used in the *Privacy Act 1988* and Australian Privacy Principles.

Examples of the kind of research that might be conducted under this exception include surveys of child immunisation rates, obesity levels in children, research into mental health, the incidence of, and risk factors for, major diseases such as cancer, diabetes and heart disease and research into the health of specific communities such as the elderly, regional communities and indigenous communities.

This category of research is intended to permit access to IPND information in order to conduct health and medical research. Research of this kind does not involve contacting persons to conduct sales, promotional or fundraising activities or to impart information to, rather than collect information from, persons.

Paragraph 6(b) specifies research regarding an electoral matter conducted by, or on behalf of, a registered political party, a political representative or a candidate in an election for a Parliament or local government authority.

The intention of specifying this kind of research is to enable the following to have access to IPND information to conduct research regarding an electoral matter:

- Federal, State and Territory members of Parliament (both lower and upper house) and Local Councillors;
- Federal, State and Territory registered political parties; and
- Candidates in elections for Federal, State and Territory Parliaments and local government authorities; and
- those acting on their behalf.

It is intended that political polling (i.e. the seeking of views or opinions on parliamentary matters) by, or on behalf of, a registered political party, a political representative or a candidate in an election for a Parliament or local government authority, will fall within this category of research.

This category of research is intended to permit access to IPND information in order to conduct research regarding an electoral matter. Research of this kind does not involve contacting persons to conduct sales, promotional or fundraising activities or to impart information to (i.e. campaigning), rather than collect information from, persons.

Paragraph 6(c) specifies research conducted by or on behalf of the Commonwealth or a Commonwealth entity which will contribute to the development of public policy, where the research is not for a primarily commercial purpose.

Specifying this kind of research is intended to enable the Commonwealth, including Commonwealth entities, and those acting on their behalf, to access IPND information for the purpose of conducting research, if the research will contribute to the development of public policy. Research of this kind does not involve contacting persons to conduct sales, promotional or fundraising activities or to impart information to, rather than collect information from, persons.

Schedule 1 – Repeals

Schedule 1 repeals *the Telecommunications (Integrated Public Number Database –Permitted Research Purposes) Instrument 2007 (No. 1)* which is due to sunset on 1 October 2017 so it can be replaced with this new 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 – Permitted Research Purposes) Instrument 2017

Overview of the Instrument

The *Telecommunications (Integrated Public Number Database – Permitted Research Purposes) Instrument 2017* (the Instrument) specifies kinds of research for the conduct of which access to information in the Integrated Public Number Database (IPND) may be permitted.

Sections 276 and 277 of the *Telecommunications Act 1997* (the Telecommunications Act) prohibit the disclosure or use of information obtained by carriers and carriage service providers in the course of providing their services. The prohibition extends to the disclosure and use of information held in the IPND, an industry wide database of residential and business telephone numbers and associated subscriber information.

Section 285 of the Telecommunications Act contains an exception to the prohibition, and permits disclosure of information from the IPND by Telstra (as the IPND Manager) to a person who holds an authorisation granted by the ACMA to receive IPND information. The IPND Scheme is the scheme under which authorisations may be granted to access information contained in the IPND for the purposes of paragraph 285(1A)(d) of the Telecommunications Act. Those purposes are the publication and maintenance of a public number directory 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.

Authorisations granted under the Instrument affect research entities and customers of carriage service providers whose IPND information is collected, stored, used and disclosed by authorisation holders under the regulatory arrangements.

Human rights implications

It has been assessed that 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.

Under the Instrument, a person who holds a research authorisation will be able to use and disclose personal information for permitted research purposes. These purposes are research relevant to public health, including epidemiological research, research regarding an electoral matter, and research conducted by or on behalf of the Commonwealth or a Commonwealth entity which will contribute to the development of public policy.

Where the research is regarding electoral matters, it must be conducted by a registered political party, political representative or a candidate in an election for a Parliament or local government authority, or a person or entity acting on their behalf. Research cannot be conducted for a primary commercial purpose.

In authorising access to the IPND, the ACMA must assure itself that IPND information will be used for the purposes 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 in the *Telecommunications (Integrated Public Number Database – Conditions for Authorisations) Determination 2017*. The purposes specified in the Instrument have been drafted in recognition of the sensitive nature of IPND information, and work to ensure the privacy of the information is protected.

These protections in the IPND Scheme and the Telecommunications Act ensure that IPND information is 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.