

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Telecommunications (Interception and Access) Act 1979

*Telecommunications (Interception and Access) Amendment (Form of Warrants No. 2)
Regulations 2019*

The *Telecommunications (Interception and Access) Act 1979* (the Act) protects the privacy of, and regulates access to, the content of telecommunications and telecommunications data. It creates a legal framework for intelligence and law enforcement agencies to access information held by communications providers for the investigation of criminal offences and other activities that threaten safety and security. The Act prohibits the interception of communications, except in specified circumstances. The Act outlines the process for the issue of warrants for authorising the interception of communications.

Section 300 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 49(1) of the Act provides that a warrant shall be in accordance with the prescribed form and shall be signed by the Judge or nominated Administrative Appeals Tribunal (AAT) member who issues it.

The *Telecommunications (Interception and Access) Amendment (Form of Warrants No. 2) Regulations 2019* (the Regulations) amends the *Telecommunications (Interception and Access) Regulations 2017* (2017 Regulations). The amendments relate to the issuing of telecommunications service warrants and named person warrant under sections 46 and 46A of the Act, respectively. In particular, the amendments relate to the matters to which an eligible Judge or nominated AAT member must have regard under paragraphs 46(2)(fa) and (g) and paragraphs 46A(2)(fa) and (g) of the Act.

Specifically, the Regulations amend Forms 1, 2, 3, and 4 that are prescribed in Schedule 1 to the 2017 Regulations and which are to be completed as part of the warrant-issuing process. The amendments make it clear, on the face of those forms, that, in deciding whether to issue a warrant, an eligible Judge or nominated AAT member must be satisfied that any submissions made by the Victorian Public Interest Monitor or the Queensland Public Interest Monitor (under sections 44A or 45 of the Act, respectively) have been taken into consideration.

Details of the Regulations are set out in **Attachment A**.

A Statement of Compatibility with Human Rights, prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, is set out in **Attachment B**. The overall assessment is that the Regulations are compatible with human rights.

Consultation

The Office of Best Practice Regulation (the OBPR) has advised that a Regulation Impact Statement is not required. The OBPR consultation reference number is 25325.

The Regulations were informed by consultation with the Attorney-General's Department, particularly regarding how changes to Forms 1, 2, 3 and 4 prescribed in Schedule 1 to the 2017 Regulations will impact Judges and AAT members who use those forms in order to issue warrants.

The Act does not specify other conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after the Regulations are registered on the Federal Register of Legislation.

Authority: Section 300 of the *Telecommunications
(Interception and Access) Act 1979*

ATTACHMENT A

Details of the *Telecommunications (Interception and Access) Amendment (Form of Warrants No. 2) Regulations 2019***Section 1 – Name**

This section provides that the title of this instrument is the *Telecommunications (Interception and Access) Amendment (Form of Warrants No. 2) Regulations 2019*.

Section 2 – Commencement

This section provides that the whole of this instrument is to commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the instrument is made under the *Telecommunications (Interception and Access) Act 1979* (the Act).

Section 4 – Schedules

This section specifies that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments*Telecommunications (Interception and Access) Regulations 2017*

The term *PIM* (short for public interest monitor) is defined in section 5 of the Act to mean:

(a) in relation to Victoria, a person appointed as a Public Interest Monitor under the *Public Interest Monitor Act 2011* of Victoria; and (b) in relation to Queensland, a person appointed as the public interest monitor under either the *Crime and Corruption Act 2001* of Queensland or the *Police Powers and Responsibilities Act 2000* of Queensland.

Provisions relating to the issuing of telecommunications service warrants and named person warrants are contained in sections 46 and 46A of the Act, respectively.

Item 1 – Schedule 1 (at the end of paragraph 2(e) of item 1 of Forms 1, 2, 3 and 4)

Item 1 in Schedule 1 to the Regulations inserts new sub-paragraphs (vii) and (viii) at the end of paragraph 2(e) of item 1 of Forms 1, 2, 3 and 4. The amendments relate to any submissions made by the Victorian PIM under section 44A of the Act, or by the Queensland PIM under

section 45 of the Act, as those submissions in turn relate to the issuing of a warrant under paragraphs 46(2)(fa) and (g) and paragraphs 46A(2)(fa) and (g) of the Act.

The effect of the amendments is that it will now be clear, on the face of the forms, that, in deciding whether to issue a warrant, an eligible Judge or nominated Administrative Appeals Tribunal member must be satisfied that any submissions made by the Victorian PIM or the Queensland PIM have been taken into consideration.

ATTACHMENT B**Statement of Compatibility with Human Rights**

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

Telecommunications (Interception and Access) Amendment (Form of Warrants No. 2) Regulations 2019

1. 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*.

Overview of the legislative instrument

2. The *Telecommunications (Interception and Access) Amendment (Form of Warrants No. 2) Regulations 2019* (the Regulations) are made by the Governor-General under section 300 of the *Telecommunications (Interception and Access) Act 1979* (the Act).
3. The Regulations amend the *Telecommunications (Interception and Access) Regulations 2017* (2017 Regulations) to provide for matters that must be considered when a warrant is issued under the Act.
4. The Regulations amend Forms 1, 2, 3, and 4 in Schedule 1 to the 2017 Regulations, to ensure that in accordance with paragraphs 46(2)(fa) and (g), as well as paragraphs 46A(2)(fa) and (g) of the Act, an eligible Judge or nominated Administrative Appeals Tribunal (AAT) member shall have regard to any submissions made by the Victorian Public Interest Monitor (PIM) or the Queensland PIM when considering the issue of a warrant under Part 2-5 of the Act.
5. The Act regulates access to telecommunications content and data. It provides the legal framework for intelligence and law enforcement agencies to access information held by communications providers for the investigation of criminal offences and other activities that threaten safety and security. For the purposes of such investigations, Part 2-5 of the Act establishes a framework of warrants authorising agencies to intercept telecommunications. Section 49 of the Act also provides that a warrant shall be in accordance with the prescribed forms in the 2017 Regulations.

Human rights implications

6. This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms. The Instrument makes technical amendments to the Regulations to give effect to the requirement in paragraphs 46(2)(fa) and (g) and in paragraphs 46A(2)(fa) and (g) of

the Act that a Judge or nominated AAT member must have regard to any submissions made by the Victorian PIM or the Queensland PIM when issuing a warrant.

7. The Regulation amends the prescribed forms for the application for a warrant under sections 46 and 46A, to make clear on the face of the forms that a Judge or nominated AAT member must have regard to any submissions made by the Victorian PIM or the Queensland PIM when issuing the warrant.

Conclusion

8. This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Peter Dutton MP
Minister for Home Affairs