

Explanatory Statement

Issued by the Authority of the Minister for Home Affairs

Telecommunications (Interception and Access) Act 1979

*Telecommunications (Interception and Access) (Emergency Service Facilities – Victoria)
Amendment Instrument 2020*

Legislative authority

1. The *Telecommunications (Interception and Access) (Emergency Service Facilities – Victoria) Amendment Instrument 2020* (the Amendment Instrument) is made under subsection 6(2D) of the *Telecommunications (Interception and Access) Act 1979* (the Act). The Amendment Instrument amends the *Telecommunications (Interception and Access) (Emergency Service Facilities – Victoria) Instrument 2020* (the Instrument).
2. The Act establishes a general prohibition against the interception of communications passing over a telecommunications system (section 7 of the Act refers). However, 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 such a communication without contravening the general prohibition.
3. This exception only applies to communications to or from premises declared by the Minister for Home Affairs (the Minister) to be an emergency service facility, pursuant to subsection 6(2B) of the Act. The Minister can only declare premises to be an emergency service facility if he or she is satisfied that the premises are operated by one of the types of forces or services listed in paragraphs 6(2B)(a) to (d) of the Act, to enable that force or service (or another force or service) to deal with a request for assistance in an emergency.
4. Under subsection 6(2B) of the Act, the Minister has declared new premises in Victoria operated by Concentrix Services to be an emergency service facility, following a change in the location of Concentrix Services operations in Victoria.
5. Subsection 6(2D) of the Act provides that, if the Minister makes a declaration under subsection 6(2B) of the Act, 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.
6. Concentrix Services operates the National Relay Service. This service allows people who are deaf, hard of hearing, and/or have a speech impairment to make and receive phone calls, including emergency calls.

Purpose of the Amendment Instrument

7. The purpose of the Amendment Instrument is to provide the required information under subsection 6(2D) of the Act, to give legal effect to operational changes to the facility taking emergency calls operated by Concentrix Services in Victoria, to ensure that the service is operating lawfully in Victoria, for the purposes of the Act.

Privacy considerations

8. Subsection 6(2G) of the Act provides that subsection 6(2F) (exemption to the general prohibition against the interception of communications passing over a telecommunications system) only applies in relation to an emergency service facility if signs notifying persons that communications to or from that facility may be listened to or recorded are clearly visible at each entrance to the facility. Consultation with Concentrix Services has confirmed that the premises specified in the Amendment Instrument are meeting this requirement.
9. Concentrix Services has published organisational privacy principles and policies on its website, and operates under a privacy and secrecy framework as set out in relevant Victorian legislation, as well as the *Privacy Act 1988* (the Privacy Act).
10. Concentrix Services has privacy policies underpinned by the principle that individuals' personal information may only be collected, used, stored or disclosed to the extent that it is reasonably necessary for the operators of the premises to execute their functions as an emergency service facility. Further, Concentrix Services requires staff members in its premises to uphold employee agreements to only access, use, or disclose personal information in the course of their duties, and for no other purpose.
12. Concentrix Services explicitly applies its own organisational privacy principles, as well as the Australian Privacy Principles in Schedule 1 to the Privacy Act, to its operations.

Limiting listening to and recording of calls

10. In addition to receiving emergency calls, the emergency service facility operated by Concentrix Services has the capability to receive and record non-emergency calls, and for staff members to receive personal calls. However, the service operator has policies, procedures and physical measures in place to restrict the listening to or recording of communications to only emergency calls.
11. Physical measures commonly implemented include having phone lines for emergency calls and personal calls located in separate rooms within the emergency service facility. It is also standard policy procedure that staff are trained not to make or receive non-emergency personal calls on phone lines that receive or record emergency calls.

Details of the Amendment Instrument

12. Section 1 provides that this instrument is the *Telecommunications (Interception and Access) (Emergency Service Facilities – Victoria) Amendment Instrument 2020*. The instrument may be cited as LIN 20/280.
13. Section 2 provides that the instrument commences the day after it is registered on the Federal Register of Legislation.
14. Section 3 provides that the instrument specified in Schedule 1, that is, the *Telecommunications (Interception and Access) (Emergency Service Facilities – Victoria) Instrument 2020* (the Instrument), is amended as set out in that Schedule.
15. Schedule 1 amends section 4 of the Instrument by repealing item 6 of the Table and replacing with new item 6, to reflect the Minister's declaration of the new premises operated by Concentrix Services as an emergency service facility. This is

notwithstanding that both the formerly declared premises and the new premises are located in the same geographical region of Ballarat.

16. Schedule 1 does not alter arrangements for other forces or services specified in the Instrument.

Consultation

20. Consultation was undertaken with Concentrix Services to obtain up-to-date information to ensure only currently operating facilities are listed.
21. The Office of Best Practice Regulation (OBPR) has confirmed that a Regulatory Impact Statement is not required. The OBPR Reference number is 43183.
22. The Amendment Instrument is a disallowable instrument under section 42 of the *Legislation Act 2003*. A Statement of Compatibility with Human Rights has been prepared and is attached.

Statement of Compatibility with Human Rights

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

Telecommunications (Interception and Access) (Emergency Service Facilities – Victoria) Amendment Instrument 2020

This Disallowable Legislative Amendment Instrument (the Amendment 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 Amendment Instrument amends the *Telecommunications (Interception and Access) (Emergency Service Facilities – Victoria) Instrument 2020*.

Overview of the Disallowable Legislative Amendment Instrument

The Amendment Instrument is made under subsection 6(2D) of the *Telecommunications (Interception and Access) Act 1979* (the Act).

The Act establishes a general prohibition against the interception of communications passing over a telecommunications system (section 7 refers). However, 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 such a communication without contravening the general prohibition.

This exception only applies to communications to or from premises declared by the Minister as emergency service facilities pursuant to subsection 6(2B) of the Act. Such a declaration is made on the basis that the Minister is satisfied that specified conditions set out in the subsection are met.

When the Minister makes a declaration under subsection 6(2B) of the Act, subsection 6(2D) requires the Minister to specify in a legislative instrument 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 purpose of the Amendment Instrument is to specify the forces or services operating premises that have been declared as an ‘emergency service facility’, for the purposes of the Act. This includes the new premises operated by Concentrix Services, which operates the National Relay Service. This service allows people who are deaf, hard of hearing and/or have a speech impairment to make and receive phone calls, including emergency calls.

Human rights implications

Interference with a person’s privacy or correspondence

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation, and that everyone has the right to the protection of the law against such interference or attacks.

The right to privacy under Article 17 can be permissibly limited in order to achieve a legitimate objective and where the limitations are lawful and not arbitrary. The term ‘arbitrary’ means that 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. The United Nations Human Rights Committee has interpreted

‘reasonableness’ in this context to imply that ‘any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case’.

Despite the general prohibition on the interception of communications in subsection 7(1) of the Act, subsection 6(2F) ensures that listening to or recording a communication passing over a telecommunications system to and from a declared *emergency service facility* by a person who is lawfully engaged in duties related to the receiving and handling of communications is not an interception of communication.

The purpose of this exception is to ensure 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. This ensures that persons requiring emergency assistance are provided with efficient and timely assistance. Recording of a call enables an emergency service to undertake appropriate clarification, review and audit in dealing with an emergency situation which may involve a threat to life.

The Amendment Instrument furthers this purpose by ensuring premises which are specified in the Amendment Instrument and are responsible for taking such calls are captured by the exception in subsection 6(2F).

The measures in the Amendment Instrument are reasonable and proportionate to achieving the objective of providing assistance in emergency situations. The Amendment Instrument is subject to a number of safeguards, including:

- the exception for recording calls to and from a declared *emergency service facility* applies only if the Minister for Home Affairs is satisfied that the premises are operated by a police force or service of the Commonwealth, State or Australian Capital Territory; or a fire or ambulance service of a State or Australian Capital Territory; or a service for despatching, or referring matters for the attention of, those 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 notifying persons that communications to or from the facility may be listened to or recorded.

Accordingly, to the extent that the measures in the Amendment Instrument may limit the prohibition on arbitrary and unlawful interference with privacy in Article 17 of the ICCPR, the limitation is proportionate to the legitimate objectives of protecting public order, public health, public safety and the rights and freedoms of others, such as the right to life under Article 6 of the ICCPR.

Right to life

The right to life under Article 6 of the ICCPR includes obligations to promote life, including taking appropriate steps to protect the right to life of those within its jurisdiction. Further, Article 10 of the Convention on the Rights of Persons with a Disability (CRPD) reaffirms that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

As discussed above, the Amendment Instrument ensures that premises in Victoria, which are declared as an *emergency service facility*, can provide appropriate and timely assistance for persons in emergency situations. Emergency services are critical to delivering first responder functions to people located in Victoria, including facilitating medical treatment to patients, as well as facilitating police or fire fighter responses to emergency (including life threatening) situations, in addition to other emergency functions related to protecting the right to life of

people in Victoria. In this regard, the Amendment Instrument promotes the right to life under Article 6 of the ICCPR and Article 10 of the CRPD.

Accessibility for persons with disabilities

Article 9 of the CRPD provides that appropriate measures must be taken to ensure to persons with disabilities have access, on an equal basis, to information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas to enable persons with disabilities to live independently and participate fully in all aspects of life. These measures, which include the identification and elimination of obstacles and barriers to accessibility, apply to information, communications and other services, including electronic services and emergency services. Under Article 9 of the CRPD, appropriate measures must be taken to promote access for persons with disabilities to new information and communications technologies and systems.

The Amendment Instrument promotes the right to accessibility by ensuring that persons with disabilities who use of the National Relay Service, operated by Concentrix at its Ballarat premises, receive appropriate and timely assistance in emergency situations and access to emergency services on an equal basis. The inclusion of this premises which delivers an emergency dispatch and referral function for emergency services through the National Relay Service is critical to ensuring accessibility to emergency services for people who are deaf, hard of hearing, and/or have a speech impairment.

Conclusion

The Amendment Instrument is compatible with human rights because it promotes the right to life under Article 6 of the ICCPR and article 10 of the CRPD, and the right of persons with disabilities to equal access to facilities and services under article 9 of the CRPD. To the extent that the Amendment Instrument limits human rights under Article 17 of the ICCPR, those limitations are permissible because they are authorised by law and are necessary, reasonable and proportionate to achieve a legitimate objective.

The Hon Peter Dutton MP

Minister for Home Affairs