EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs

*Telecommunications (Interception and Access) Act 1979*

Telecommunications (Interception and Access) (Communications Access Co-ordinator) Amendment Instrument 2022

The instrument, Departmental reference LIN 22/008, is made under subsection 6R(2) of the *Telecommunications (Interception and Access) Act 1979* (the TIA Act).

The instrument amends the *Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2019* (the primary instrument) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.

The instrument commences on the day after registration on the Federal Register of Legislation, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

The TIA Act establishes the position of *Communications Access Co-ordinator* as the primary point of liaison for law enforcement agencies, interception agencies, telecommunications carriers and carriage service providers in relation to telecommunications interception and data retention issues.

Under section 6R of the TIA Act, *Communications Access Co-ordinator* is the Secretary of the Department of Home Affairs (the Department) or a person or body specified by the Minister in a legislative instrument under that section. The primary instrument specifies, as *Communications Access Co-ordinator*, persons who hold, occupy or perform the duties of certain positions in certain work areas in the Department.

The primary instrument was recently amended to take into account a Departmental restructure on 1 September 2021 (see *Telecommunications (Interception and Access) (Communications Access Co-ordinator) Amendment Instrument 2021 (No. 2)*).

Further amendments to the primary instrument are now required to:

* + update the name of the Risk Assessment Branch within the Cyber and Infrastructure Security Centre (formerly the Risk Assessment and Modelling Branch), following a restructure in February 2022;
  + remove the reference to ‘SES3’ and specify the position of Group Manager (defined in the instrument) as *Communications Access Co-ordinator* to reflect that the Cyber and Infrastructure Security Centre is headed by a Group Manager, not a Senior Executive Service Band 3; and
  + correct a grammatical error (by inserting the words ‘in the’ at the start of the paragraph 5(d)).

There are no other changes to the number of people, positions, classification levels or work areas specified as the *Communications Access Co-ordinator* resulting from the amendments in the instrument.

Consultation

No consultation was undertaken prior to making the instrument, as it makes technical amendments that are minor and machinery in nature.

Details of the instrument

Section 1 sets out the name of the instrument.

Section 2 provides for the commencement of the instrument on the day after registration.

Section 3 gives effect to Schedule 1 to the instrument, to make amendments to the primary instrument.

Schedule 1 to the instrument:

* + inserts a definition of ‘Group Manager’ to assist with the interpretation of new paragraph 5(d) (item 1);
  + repeals and remakes paragraph 5(c) to update the name of the Risk Assessment Branch within the Cyber and Infrastructure Security Centre (formerly the Risk Assessment and Modelling Branch), following a restructure in February 2022 (item 2);
  + repeals and remakes paragraph 5(d) to provide that the SES2 and Group Manager in the Cyber and Infrastructure Security Centre are specified, and correct a previous grammatical error (by inserting the words ‘in the’ at the start of the paragraph) (item 3); and
  + deletes paragraph 5(e) of the primary instrument as a consequence of remaking paragraph 5(d) (item 4).

Parliamentary scrutiny etc.

The instrument is subject to disallowance under section 42 of the Legislation Act. A Statement of Compatibility with Human Rights has been prepared in relation to the instrument, and provides that the instrument does not raise any human rights issues. The Statement is included at **Attachment A** to this explanatory statement.

The instrument was made by the Minister for Home Affairs, in accordance with subsection 6R(2) of the TIA Act.

Attachment A

Statement of Compatibility with Human Rights

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

*Telecommunications (Interception and Access) (Communications Access Co-ordinator) Amendment Instrument 2022*

This Disallowable 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 Disallowable Legislative Instrument

The *Telecommunications (Interception and Access) (Communications Access Co-Ordinator) Amendment Instrument 2022* (the instrument) is made under subsection 6R(2) of the *Telecommunications (Interception and Access) Act 1979* (the TIA Act). Under section 6R of the TIA Act, the *Communications Access Co-ordinator* is the Secretary of the Department of Home Affairs (the Department) or a person or body specified by the Minister in a legislative instrument under that section.

The *Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2019* (the primary instrument) specifies, as *Communications Access Co-ordinator*, persons who hold, occupy or perform the duties of certain positions in certain work areas in the Department.

The instrument makes minor changes to the primary instrument to:

* update the name of the Risk Assessment Branch within the Cyber and Infrastructure Security Centre (formerly the Risk Assessment and Modelling Branch), following a restructure in February 2022;
* remove the reference to ‘SES3’ and specify the position of Group Manager (defined in the instrument) as *Communications Access Co-ordinator* to reflect that the Cyber and Infrastructure Security Centre is headed by a Group Manager, not a Senior Executive Service Band 3; and
* correct a grammatical error (by inserting the words “in the” at the start of the paragraph 5(d)).

There are no other changes to the number of people, positions, classification levels or work areas resulting from the making of the instrument.

The instrument is technical in nature, and does not affect the functions or powers of a *Communications Access Co-ordinator*, which are governed by the TIA Act and the *Telecommunications Act 1997*.

Human rights implications

The instrument makes minor changes to fix a grammatical error and update references to a position and branch within the Cyber and Infrastructure Security Centre in the Department. The amendments are minor and machinery in nature and are consistent with the original intent of the primary instrument. As a result, this Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Karen Andrews MP**

**Minister for Home Affairs**