

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

Telecommunications (Interception and Access) Act 1979

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

- 1 The instrument is made under subsection 6R(2) of the *Telecommunications (Interception and Access) Act 1979* (the TIA Act).
- 2 The instrument remakes the *Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2019* (the 2019 instrument) to take into account the new Administrative Arrangements Order (AAO), which commenced on 1 July 2022 and which moved administrative responsibility of most of the TIA Act to the Attorney-General's portfolio.
- 3 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

- 4 The TIA Act establishes the position of *Communications Access Co-ordinator* as the primary point of liaison for interception agencies and telecommunications carriers and carriage service providers in relation to telecommunications interception and data retention issues.
- 5 Under section 6R of the TIA Act, the *Communications Access Co-ordinator* is the Secretary of the Attorney-General's Department or a person or body specified by the Attorney-General in a legislative instrument under that section. The 2019 instrument specified, as *Communications Access Co-ordinator*, persons who hold, occupy or perform the duties of certain positions in certain work areas in the Department of Home Affairs.
- 6 The 2019 instrument is required to be remade as a result of a new AAO. The new instrument:
 - clarifies that the definition of *Group Manager* is a position specific to the Department of Home Affairs
 - specifies persons who hold or perform the duties of certain positions in the National Security Policy Branch of the Integrity and International Group in the Attorney-General's Department as a *Communications Access Co-ordinator*, and
 - specifies persons who hold or perform the duties of certain positions in the Cyber and Infrastructure Security Centre in the Department of Home Affairs as a *Communications Access Co-ordinator*.
- 7 The positions that have been specified as a *Communications Access Co-ordinator* remain unchanged from the 2019 instrument. The changes simply reflect the fact that the National Security Policy Branch has moved from the Strategy and National Resilience Group in the Department of Home Affairs to the Integrity and International Group in the Attorney-General's Department and ensures that positions in the Cyber and Infrastructure Security Centre (which remains in the Department of Home Affairs) retain their existing specification.

Consultation

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

Details of the instrument

- 9 Section 1 sets out the name of the instrument.
- 10 Section 2 provides for the commencement of the instrument on the day after registration.
- 11 Section 3 notes the instrument is made under subsection 6R(2) of the *Telecommunications (Interception and Access) Act 1979*.
- 12 Section 4 defines words and terms used in the instrument. In particular, the definition of *Group Manager* clarifies this is a position in the Department of Home Affairs. This assists with the interpretation of subparagraph 3(2)(b)(ii);
- 13 Section 5 of the instrument specifies persons who hold or perform the duties of the listed positions in:
- the National Security Policy Branch of the Integrity and International Group in the Attorney-General's Department, or
 - the Cyber and Infrastructure Security Centre in the Department of Home Affairs
- as a *Communications Access Co-ordinator* for the purposes of subsection 6R(2) of the TIA Act.
- 14 Section 6 of the instrument repeals the 2019 instrument.

Parliamentary scrutiny etc.

- 15 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.
- 16 The instrument was made by the Attorney-General in accordance with subsection 6R(2) of the TIA Act.

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) 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) Instrument 2022* (the 2022 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 Attorney-General's Department or a person or body specified by the Attorney-General in a legislative instrument under that section.

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

The 2022 instrument defines as a *Communications Access Co-ordinator*:

- persons who hold or perform the duties of listed positions in the National Security Policy Branch of the Integrity and International Group in the Attorney-General's Department; and
- persons in the Cyber and Infrastructure Security Centre in the Department of Home Affairs.

There are no other changes to the 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*.

The instrument repeals the *Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2019*.

Human rights implications

The instrument makes minor changes to update references to positions that have moved from the Department of Home Affairs to the Attorney-General's Department as a result of a new Administrative Arrangements Order, which commenced on 1 July 2022. The changes 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 Mark Dreyfus QC MP

Attorney-General