

## EXPLANATORY STATEMENT

Issued by the Attorney-General

*Telecommunications (Interception and Access) Act 1979*

*Telecommunications (Interception and Access) (Emergency Service Facilities – Western Australia)  
Instrument 2022*

### ***Legislative authority***

1. The *Telecommunications (Interception and Access) (Emergency Services Facilities – Western Australia) Instrument 2022* (the Instrument) is made under subsection 6(2D) of the *Telecommunications (Interception and Access) Act 1979* (the Act).
2. The Act establishes a general prohibition against the interception of communications passing over a telecommunications system (section 7 of the Act). 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. The Attorney-General may declare premises to be an emergency service facility, pursuant to subsection 6(2B) of the Act. The Attorney-General can only declare such premises if satisfied that the premises are operated by one of the types of forces or services listed below to enable that force or service (or another force or service) to deal with a request for assistance in an emergency:
  - a Commonwealth, State or Territory police force or service
  - a fire service of a State or Territory
  - an ambulance service of a State or Territory, or
  - a service for despatching, or referring matters for the attention of, a force service referred to above.
4. Under subsection 6(2B) of the Act, the Attorney-General has declared certain premises in Western Australia that are operated by the following forces or services to be emergency services facilities: Western Australia Police Force, St John Ambulance Australia (Western Australia), Department of Fire and Emergency Services, Airservices Australia – Aviation Rescue and Fire Fighting Service, Royal Flying Doctor Service, and Perth Airport Control Centre.
5. Subsection 6(2D) of the Act provides that, if the Attorney-General makes a declaration under subsection 6(2B) of the Act, the Attorney-General 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.

### ***Purpose of the Instrument***

6. The purpose of the Instrument is to specify information under subsection 6(2D) of the Act. That is, to meet the statutory requirements for declaring premises to be emergency service facilities operated by relevant forces and services in Western Australia, to ensure that those forces and services in Western Australia can lawfully intercept communications when taking emergency calls without the requirement to obtain consent.

### ***Privacy considerations***

7. Subsection 6(2G) of the Act provides that subsection 6(2F) 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 the relevant emergency service facility operators has confirmed that the premises that are the subjects of the Instrument are meeting this requirement.
8. For each of the emergency service facilities, its organisational privacy policies are 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.

#### ***Limiting listening to and recording of calls***

9. Where emergency service facilities operating in Western Australia have the capability to receive and record non-emergency calls, and for staff members to receive personal calls, all service operators have policies, procedures and physical measures in place to restrict the listening to or recording of communications to only emergency calls.
10. An example of a physical measure commonly implemented is having phone lines for emergency calls and personal calls located in separate rooms within the emergency service facility. It is also standard procedure across the specified emergency service facilities 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 Instrument***

11. The Instrument repeals the *Telecommunications (Interception and Access) (Emergency Service Facilities – Western Australia) Instrument 2015*.
12. The Instrument specifies in Schedule 1 the name of the force or service operating the premises that have been declared to be an emergency services facility and the geographical region in which those premises are located. The details specified in Schedule 1 are Western Australia Police Force, St John Ambulance Australia (Western Australia), Department of Fire and Emergency Services, Airservices Australia – Aviation Rescue and Firefighting Service, Royal Flying Doctor Service and Perth Airport Control Centre.
13. The Instrument commences the day after it is registered.

### ***Consultation***

14. Extensive consultation was undertaken with each service operator for the emergency service facilities specified in the Instrument to obtain up-to-date information to ensure only currently operating facilities are listed.
15. The Office of Best Practice Regulation (OBPR) has confirmed that a Regulatory Impact Statement is not required (OBPR Reference number: OBPR22-02890).
16. The 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 – Western Australia) Instrument 2022**

This Disallowable Legislative Instrument (the 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 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.

The Attorney-General may declare premises to be emergency service facilities pursuant to subsection 6(2B) of the Act. Such a declaration can only be made if the Attorney-General is satisfied that the premises are operated by one of the types of forces or services listed in below to enable that force or service (or another force or service) to deal with a request for assistance in an emergency:

- a Commonwealth, State or Territory police force or service
- a fire service of a State or Territory
- an ambulance service of a State or Territory, or
- a service for despatching, or referring matters for the attention of, a force service referred to above.

If the Attorney-General makes a declaration under subsection 6(2B) of the Act, subsection 6(2D) requires the Attorney-General 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 Instrument is to specify the names of the Western Australian forces or services operating the premises in Western Australia that have been declared to be an ‘emergency service facility’ and the geographical region in which those premises are located, for the purposes of the Act. This instrument revokes the 2015 instrument, *Telecommunications (Interception and Access) (Emergency Service Facilities – Western Australia) Instrument 2015*.

#### **Human rights implications**

This Instrument may engage the right to privacy contained in Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) and the right to life contained in Article 6 of the ICCPR.

##### *Interference with a person’s privacy or correspondence*

Article 17 of the 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 such a 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 effect of the Instrument is reasonable and proportionate to achieving the objective of providing assistance in emergency situations. The Instrument is subject to a number of safeguards, including:

- the exception for recording calls to and from an emergency service facility applies only if the Attorney-General is satisfied that the premises are operated by a police force or service of the Commonwealth, state or territory; or a fire or ambulance service of a state or territory; or a service for despatching, or referring matters for the attention of, those forces or 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 Instrument may engage the right to privacy in Article 17 of the ICCPR, any such 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.

The Instrument ensures that premises in Western Australia, which are declared to be 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 Western Australia, 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 Western Australia. In this regard, the Instrument promotes the right to life under Article 6 of the ICCPR.

## **Conclusion**

The Instrument is compatible with human rights because it promotes the right to life under Article 6 of the ICCPR. To the extent that the 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 MARK DREYFUS KC MP**

**Attorney-General**