

TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) (EMERGENCY SERVICE
FACILITIES – NORTHERN TERRITORY) INSTRUMENT 2023

EXPLANATORY STATEMENT

Issued by the Authority of the Attorney- General
in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

The purpose of the *Telecommunications (Interception and Access) (Emergency Service Facilities – Northern Territory) Instrument 2023* (the Instrument) is to specify the emergency service facilities operated by Northern Territory police, fire, ambulance and dispatching services in the geographic regions of Tennant Creek, Alice Springs, Berrimah, Marrara and Yulara. The Instrument is made under subsection 6(2D) of the *Telecommunications (Interception and Access) Act 1979* (TIA Act).

Background

The TIA Act establishes a general prohibition against the interception of communications passing over a telecommunications system. However, there is an exception in section 6 that allows a person to listen to or record emergency calls at emergency facilities declared by the Attorney-General in certain circumstances.

Under subsection 6(2B), the Attorney-General may declare premises to be emergency service facilities if the Attorney-General is satisfied that the premises are operated by a police, fire, ambulance or dispatching service to enable emergency services to deal with a request for assistance in an emergency.

Northern Territory's previous instrument, the *Telecommunications (Interception and Access) (Emergency Services Facilities – Northern Territory) Instrument 2013* (2013 Instrument), is due to sunset on 1 April 2024. The Attorney-General has made a declaration under subsection 6(2B) of the TIA Act to update and reissue the Instrument.

Subsection 6(2D) of the TIA Act provides that, if the Attorney-General makes a declaration under subsection 6(2B) of the TIA Act, the Attorney-General must, by legislative instrument, specify the name of the emergency service and the geographic region in which those premises are located.

Details of the Instrument are set out in **Attachment A**. The Instrument satisfies the Attorney-General's obligations under subsection 6(2D) of the TIA Act.

The Instrument is a disallowable instrument under section 42 of the *Legislation Act 2003* and therefore a Statement of Compatibility with Human Rights has been provided at **Attachment B**.

CONSULTATION

The Instrument was made to reflect the location of premises operated by Northern Territory forces or services that have been declared emergency service facilities. Consultation was undertaken with the services and forces operating the premises and no concerns were raised.

It was not necessary to conduct consultation beyond Northern Territory forces and services prior to the Instrument being made as the Instrument is technical in nature in that communications are already

being recorded and listened to in emergency services facilities listed in the *Telecommunications (Interception and Access) (Emergency Services Facilities – Northern Territory) Instrument 2013*.

The Office of Impact Assessment (OIA) has confirmed that a Regulatory Impact Statement is not required (OIA Reference OIA23-05281) for this instrument. The OIA considered this Instrument is unlikely to have a more than minor impact, introducing no significant regulatory burden or impact for Australian individuals, businesses, or community organisations.

NOTES ON SECTIONS

Section 1 – Name

Section 1 provides that the Amendment Instrument is the *Telecommunications (Interception and Access) (Emergency Service Facilities –Northern Territory) Instrument 2023*.

Section 2 – Commencement

Section 2 provides that section 4 commences the start of the day after the Instrument is registered. This ensures the 2013 Instrument is not in force concurrently with the Instrument.

The remainder of the Instrument commences the day after the Instrument is registered.

Section 3 – Authority

Section 3 provides that the Instrument is made under subsection 6(2D) of the *Telecommunications (Interception and Access) Act 1979*. In addition, subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal any such instrument.

Section 4 – Repeal

Section 4 repeals the *Telecommunications (Interception and Access) (Emergency Services Facilities – Northern Territory) Instrument 2013*.

Section 5

Section 5 specifies that the premises operated by the Police Service of the Northern Territory, Ambulance Service of the Northern Territory, Northern Territory Emergency Service and Airservices Australia in the geographic regions of Tennant Creek, Alice Springs, Berrimah, Darwin and Yulara have been declared as emergency service facilities.

All of these facilities were listed in the sunseting 2013 Instrument.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

The *Telecommunications (Interception and Access) (Emergency Service Facilities – Northern Territory) Instrument 2023* (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 Attorney-General has, under subsection 6(2B) of the *Telecommunications (Interception and Access) Act 1979* (TIA Act), declared premises in Northern Territory to be emergency service facilities. The purpose of the Instrument is to specify the emergency service facilities operated by Northern Territory police, fire, ambulance and dispatching services in the geographic regions of Tennant Creek, Alice Springs, Berrimah, Marrara and Yulara.

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 TIA Act, section 6 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 first notifying the caller of the recording. 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, necessary and proportionate to achieving the objective of providing assistance in emergency situations. The Instrument is subject to a number of safeguards, including:

- the exception applies only if the Attorney-General is satisfied that the premises are operated by a police, ambulance, fire or dispatching service to enhance them to deal with a request for assistance in an emergency,
- under subsection 6(2G), the facility must erect signs easily visible at each entrance to the facility notifying persons that communications to or from the facility may be listened to or recorded and has all facilities have confirmed that they will do this, and
- the instrument is subject to disallowance and sunset.

Consultation occurred with relevant forces and services in the Northern Territory to understand the privacy arrangements in place at the premises listed in the Instrument. Privacy policies, training and codes of conduct focus on the collection, use, storage and disclosure of information being undertaken only to the extent necessary to facilitate the operations of the premises as emergency service facilities.

Accordingly, to the extent that the measures in the 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 objective 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.

In addition, under Article 12(3) of the ICCPR, limitation of rights may be permissible where they are necessary to protect interests including national security, public order, or the rights and freedoms of others such as the right to life under Article 6 of the ICCPR.

Right to life

The Instrument positively engages the right to life under Article 6. 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.

As discussed above, the Instrument ensures that the premises in the Northern Territory which are declared as emergency service facilities, can provide appropriate and timely assistance for persons in emergency situations. Emergency services are critical to delivering first responder functions to people located in the Northern Territory, including facilitating medical treatment to patients, as well as facilitating police or fire fighter responses to emergencies (including lift threatening situations). 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 it 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.