

TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) (EMERGENCY SERVICE FACILITIES – WESTERN AUSTRALIA) AMENDMENT INSTRUMENT (NO. 1) 2024

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 – Western Australia) Amendment Instrument (No. 1) 2024* (the Amendment Instrument) is to delay the revocation of the declaration for the Cannington facility operated by the Western Australia Police Force to the 31 July 2024.

The Amendment Instrument is made under subsection 6(2D) of the *Telecommunications (Interception and Access) Act 1979* (TIA Act) and amends the *Telecommunications (Interception and Access) (Emergency Service Facilities – Western Australia) Amendment Instrument (No. 1) 2023* (the Instrument).

**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 a premise to be emergency service facilities if the Attorney-General is satisfied that the premise is operated by a police, fire, ambulance or dispatching service to enable emergency services to deal with requests for assistance in an emergency.

The Western Australia Police Force notified the Attorney-General's Department that a facility listed in the Instrument which is to be decommissioned will remain in operation beyond 1 April 2024, the current revocation date of the declaration. The facility will now cease operation on 1 July 2024 as the Western Australia Police Force requires additional time to complete the tender and building works required to retire the premise. The Western Australia Police Force has also confirmed that there will continue to be signs clearly visible at the entrance to the facility notifying persons that communications to or from that facility may be listened to or recorded.

The Attorney-General subsequently extended the duration of the declaration for the premise at Cannington to 31 July 2024 to ensure that the facility remains correctly declared for the entirety of its operation.

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 the premise is located.

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

The Amendment 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 Amendment Instrument was made to delay the revocation of the declaration for the premise location as advised by Western Australia Police Force. Consultation was undertaken with the Western Australia Police Force on the draft instrument and the Western Australia Police Force did not raise any concerns.

It was not necessary to conduct consultation beyond Western Australia Police Force prior to the Amendment Instrument being made as the Amendment Instrument is technical in nature in that communications are already being recorded and listened to at the emergency facility. The Amendment Instrument merely delays the revocation of the declaration.

The Office of Impact Assessment (OIA) has confirmed that a Regulatory Impact Statement is not required (OIA Reference OIA24-06855) for this instrument. The OIA considered that this Declaration 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 – Western Australia) Amendment Instrument (No 1) 2024*.

### Section 2 – Commencement

Section 2 provides that the Amendment Instrument commences the day after the Amendment Instrument is registered.

### Section 3 – Authority

Section 3 provides that the Amendment 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, rescind, revoke, amend, or vary any such instrument.

### Section 4 - Schedule

Schedule 1 of the Amendment Instrument amends Schedule 1 to the *Telecommunications (Interception and Access) (Emergency Service Facilities – Western Australia) Amendment Instrument (No. 1) 2023*.

Item 1 specifies that the premise operated by Western Australia Police Force in the geographic region of Cannington is to be removed from the Instrument on 31 July 2024, rather than 1 April 2024. This ensures that the facility is not removed before it has ceased operating as an emergency service facility.

## 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 - Western Australia) Amendment Instrument (No. 1) 2024* (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*.

### Overview of the Amendment Instrument

The Attorney-General has, under subsection 6(2B) of the TIA Act, delayed the revocation of the declaration for a facility at Cannington to 31 July 2024 to ensure that the facility remains declared for the full period of its operation.

The purpose of the Amendment Instrument is to discharge the Attorney-General's obligation under subsection 6(2D) of the TIA Act to make a legislative instrument that specifies the name of the emergency service and the geographic region in which the premise is located after making a declaration under subsection 6(2B).

### 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, 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 communications.

The purpose of this exception is to ensure that emergency services are able to assist emergency callers and respond to emergency situations as quickly as possible, without first notifying callers of the recording. This ensures that persons requiring emergency assistance are provided with efficient and timely assistance. Recording calls enables an emergency service to undertake appropriate clarification, review and audit in dealing with emergency situations, which may involve a threat to life.

The effect of the Amendment Instrument is 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 applies only if the Attorney-General is satisfied that the premise is operated by a police, ambulance, fire or dispatching service to enable 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 the Western Australia Police Force has confirmed that it continues to have signs erected there, and
- the instrument is subject to disallowance and sunseting.

Previous consultation has occurred with the Western Australia Police Force to understand the privacy arrangements in place at the Cannington premise. Western Australia Police have confirmed that they will continue to conduct new inductions for all staff and provide induction material. This material contains notifications of the recording of communications and policies on the requirements for access to the calls. Access to recorded communications will continue to be limited to specific responsible staff and areas.

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 objective of protecting public order, public health, public safety and the rights and freedoms of others.

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 Amendment 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 Amendment Instrument ensures that the premise in Cannington, which is declared as an emergency service facility, can continue to provide appropriate and timely assistance for persons in emergency situations. Emergency services are critical to delivering first responder functions to people located in the Western Australia, including facilitating police or fire fighter responses to emergencies (including lift threatening situations). In this regard, the Amendment Instrument promotes the right to life under Article 6 of the ICCPR.

### **Conclusion**

The Amendment 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.