



# **Communications Legislation Amendment Act (No. 1) 2004**

**No. 35, 2004**

**An Act to amend legislation related to  
communications, and for related purposes**

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## **An Act to amend legislation related to communications, and for related purposes**

[Assented to 20 April 2004]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Communications Legislation  
Amendment Act (No. 1) 2004*.

## **2 Commencement**

This Act commences on the day after the day on which it receives the Royal Assent.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments

### *Administrative Decisions (Judicial Review) Act 1977*

#### **1 After paragraph (d) of Schedule 1**

Insert:

(daa) decisions of the Attorney-General under section 58A, or subsection 581(3), of the *Telecommunications Act 1997*;

### *Australian Security Intelligence Organisation Act 1979*

#### **2 Section 35 (at the end of the definition of *prescribed administrative action*)**

Add:

; or (d) the exercise of a power under section 58A, or subsection 581(3), of the *Telecommunications Act 1997*.

#### **3 After subsection 38(1)**

Insert:

(1A) This section does not apply to a security assessment if section 38A applies to the assessment.

#### **4 After section 38**

Insert:

#### **38A Notification where assessment relates to Telecommunications Act**

- (1) This section applies to an adverse or qualified security assessment in respect of a person (the *assessed person*) if the assessment is given to the Attorney-General in connection with section 58A, or subsection 581(3), of the *Telecommunications Act 1997*.
- (2) Within 14 days after receiving the assessment, the Attorney-General must give to the assessed person a notice in writing, to which a copy of the assessment is attached, informing the assessed person of the making of the assessment and containing

information, in the form prescribed for the purposes of subsection 38(1), concerning his or her right to apply to the Tribunal under this Part.

- (3) If the Attorney-General is satisfied that the assessment contains any matter the disclosure of which would be prejudicial to the interests of security, then the Attorney-General must exclude that matter from the copy provided under subsection (2).

### ***Telecommunications Act 1997***

#### **5 Section 7 (paragraph (f) of the definition of agency)**

Omit “Criminal Justice”, substitute “Crime and Misconduct”.

#### **6 After section 53**

Insert:

##### **53A Copy of application to be given to agency co-ordinator**

- (1) The ACA must give a copy of the application to the agency co-ordinator.
- (2) For the purposes of sections 56A and 59, the application is taken not to have been received by the ACA until the copy is received by the agency co-ordinator.

#### **7 Subsection 55(1)**

Omit “28 days”, substitute “20 business days”.

#### **8 At the end of section 55**

Add:

- (3) In this section:

*business day* means a day on which the ACA is open for business in the Australian Capital Territory and in Victoria.

#### **9 After section 56**

Insert:



## 56A Consultation with agency co-ordinator

- (1) The ACA must not grant a carrier licence unless it has consulted the agency co-ordinator about the licence application.
- (2) Within 15 business days after the date on which the ACA received the licence application, the agency co-ordinator may give a written notice to the ACA, stating that the agency co-ordinator does not require any further consultation about the application. The notice cannot be revoked.

Note: Under section 53A, the application is treated as not being received by the ACA until a copy has been received by the agency co-ordinator.

- (3) Within 15 business days after the date on which the ACA received the licence application, the agency co-ordinator may give a written notice to the ACA:
  - (a) stating that, while the notice remains in force, the ACA must not grant the carrier licence; and
  - (b) specifying the period during which the notice remains in force (unless earlier revoked), which period cannot end more than 3 months after the date of the notice.

However, the agency co-ordinator cannot give such a notice if the agency co-ordinator has earlier given a notice under subsection (2) in relation to the application.

- (4) At any time while a notice is in force under subsection (3), or under this subsection, the agency co-ordinator may give a further written notice to the ACA:
  - (a) stating that, while the notice remains in force, the ACA must not grant the carrier licence; and
  - (b) specifying the period during which the notice remains in force (unless earlier revoked), which period cannot end more than 3 months after the date of the notice or more than 12 months after the date of the notice under subsection (3).
- (5) The agency co-ordinator may, by notice in writing to the ACA, revoke a notice under subsection (3) or (4).
- (6) The agency co-ordinator cannot issue a further notice under subsection (3) or (4) in respect of the application after it has revoked such a notice.

- (7) The ACA must give the applicant a copy of each notice that the ACA receives from the agency co-ordinator under subsection (3), (4) or (5).
- (8) The ACA must not grant the carrier licence while a notice is in force under subsection (3) or (4).
- (9) In this section:

*business day* means a day on which the ACA is open for business in the Australian Capital Territory and in Victoria.

## 10 After section 58

Insert:

### 58A Refusal of carrier licence—security

- (1) If the Attorney-General, after consulting the Prime Minister and the Minister administering this Act, considers that the grant of a carrier licence to a particular person would be prejudicial to security, the Attorney-General may give a written direction to the ACA not to grant a carrier licence to the person.
- (2) The ACA must comply with a direction under subsection (1).
- (3) While a direction is in force under this section:
  - (a) the ACA cannot reconsider a non-compulsory refusal to grant a carrier licence to the person; and
  - (b) the Administrative Appeals Tribunal cannot consider an application for review of a non-compulsory refusal to grant a carrier licence to the person.
- (4) If an application for a carrier licence is pending at the time when the Attorney-General gives a direction to the ACA under this section, then the application lapses.

Note: Section 73A provides for refund of the application charge.

- (5) In this section:

*non-compulsory refusal* means a refusal to grant a carrier licence, other than a refusal that is required by section 56A or this section.

*security* has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

## 11 Section 59

Repeal the section, substitute:

### 59 Time limit on licence decision

*Deemed refusal of licence application if no decision by deadline*

- (1) If the ACA neither grants, nor refuses to grant, a carrier licence before the end of the deadline day worked out under the following subsections, then the ACA is taken, at the end of that day, to have refused to grant the licence.

*Case 1: no section 55 request and no section 56A notice in force*

- (2) If:
- (a) the ACA did not give a section 55 request; and
  - (b) there is no section 56A notice in force at the end of the 20th business day after the application day;
- then the deadline day is the 20th business day after the application day.

*Case 2: no section 55 request but section 56A notice in force*

- (3) If:
- (a) the ACA did not give a section 55 request; and
  - (b) there is a section 56A notice in force at the end of the 20th business day after the application day;
- then the deadline day is the fifth business day after the section 56A expiration day. For this purpose, the *section 56A expiration day* is the first day after the end of that 20th business day on which there is no notice in force under section 56A.

*Case 3: section 55 request complied with and no section 56A notice in force*

- (4) If:
- (a) the ACA gave a section 55 request; and
  - (b) the request was complied with; and

- (c) there is no section 56A notice in force at the end of the tenth business day after the day on which the request was complied with;

then the deadline day is the tenth business day after the day on which the request was complied with.

*Case 4: section 55 request complied with and section 56A notice in force*

(5) If:

- (a) the ACA gave a section 55 request; and
- (b) the request was complied with; and
- (c) there is a section 56A notice in force at the end of the tenth business day after the day on which the request was complied with;

then the deadline day is the fifth business day after the section 56A expiration day. For this purpose, the *section 56A expiration day* is the first day after the end of that tenth business day on which there is no notice in force under section 56A.

*Case 5: section 55 request not complied with and no section 56A notice in force*

(6) If:

- (a) the ACA gave a section 55 request; and
- (b) the request was not complied with; and
- (c) there is no section 56A notice in force at the end of the tenth business day after the day specified in the section 55 request;

then the deadline day is the tenth business day after the day specified in the section 55 request.

*Case 6: section 55 request not complied with and section 56A notice in force*

(7) If:

- (a) the ACA gave a section 55 request; and
- (b) the request was not complied with; and
- (c) there is a section 56A notice in force at the end of the tenth business day after the day specified in the section 55 request;

then the deadline day is the fifth business day after the section 56A expiration day. For this purpose, the *section 56A expiration day* is

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the first day after the end of that tenth business day on which there is no notice in force under section 56A.

(8) In this section:

***application day*** means the day on which the ACA received the licence application.

Note: Under section 53A, the application is treated as not being received by the ACA until a copy has been received by the agency co-ordinator.

***business day*** means a day on which the ACA is open for business in the Australian Capital Territory and in Victoria.

***section 55 request*** means a request under section 55 in relation to the licence application.

***section 56A notice*** means a notice under subsection 56A(3) or (4) in relation to the licence application.

## 12 After section 73

Insert:

### 73A Refund of application charge

- (1) This section applies to application charge that has been paid in respect of an application for a carrier licence if:
  - (a) the application lapses under section 58A; or
  - (b) the application has been refused and there is no longer any possibility of the refusal decision being set aside.
- (2) The ACA, on behalf of the Commonwealth, must refund the application charge to the applicant.
- (3) The Consolidated Revenue Fund is appropriated for payments under this section.
- (4) In this section:

***application charge*** means charge imposed by Part 2 of the *Telecommunications (Carrier Licence Charges) Act 1997*.

## 13 Subsection 282(10)

Insert:

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*chief executive officer* includes an acting chief executive officer.

**14 Subsection 282(10)**

Insert:

*Commissioner of Police* includes an acting Commissioner of Police.

**15 Subsection 282(10)**

Insert:

*Deputy Commissioner of Police* includes an acting Deputy Commissioner of Police.

**16 Subsection 282(10) (paragraph (f) of the definition of *criminal law-enforcement agency*)**

Omit “Criminal Justice”, substitute “Crime and Misconduct”.

**17 Subsection 282(10) (at the end of the definition of *officer*)**

Add:

; or (c) a person whose services have been made available to the agency.

**18 Subsection 282(10) (paragraphs (a) to (d) of the definition of *senior officer*)**

Repeal the paragraphs, substitute:

(a) if the agency is the Australian Federal Police:

- (i) the Commissioner of Police referred to in section 6 of the *Australian Federal Police Act 1979*; or
- (ii) a Deputy Commissioner of Police referred to in section 6 of the *Australian Federal Police Act 1979*; or
- (iii) a senior executive AFP employee (being an AFP employee in respect of whom a declaration is in force under section 25 of the *Australian Federal Police Act 1979*) who is authorised in writing by the Commissioner of Police for the purposes of this subparagraph; or
- (iv) an AFP employee (being an employee in respect of whom a declaration is in force under section 40B of the *Australian Federal Police Act 1979*) who is employed, or is acting, in an office or position in the Australian

- Federal Police which is involved in the management of the Australian Federal Police and which has been nominated in writing by the Commissioner of Police for the purposes of this subparagraph; or
- (v) the holder or occupier from time to time of an office or position in the Australian Federal Police which is involved in the management of the Australian Federal Police and which has been nominated in writing by the Commissioner of Police for the purposes of this subparagraph; or
- (b) if the agency is the police force or service of a State or Territory:
- (i) the Commissioner of Police (however designated) of the State or Territory; or
  - (ii) a Deputy Commissioner of Police (however designated) of the State or Territory; or
  - (iii) an officer of the police force or service whose rank is that of inspector (or equivalent) or above and who is authorised in writing by the Commissioner of Police for the purposes of this subparagraph; or
  - (iv) an officer who holds, or is acting in, an office or position in the police force or service who has a rank referred to in subparagraph (iii), being an office or position which has been nominated in writing by the Commissioner of Police for the purposes of this subparagraph; or
  - (v) an officer of the police force or service who holds, or is acting in, an office or position in the police force or service which is involved in the management of the police force or service and which has been nominated in writing by the Commissioner of Police for the purposes of this subparagraph; or
- (c) if the agency is neither the Australian Federal Police nor the police force or service of a State or Territory:
- (i) the chief executive officer or an acting chief executive officer of the agency; or
  - (ii) an officer of the agency (by whatever name called) who holds, or is acting in, an office or position in the agency which is involved in the management of the agency and which has been nominated in writing by the chief

executive officer of the agency for the purposes of this subparagraph; or

- (d) if a group of officers of the agency perform their duties at premises that are:
- (i) occupied by the agency; and
  - (ii) located at a place outside the boundaries of a capital city of a State or internal Territory;
- the most senior of that group of officers, being a person who has been nominated in writing by the Commissioner of Police, or other chief executive officer, of the agency for the purposes of this paragraph.

## **19 At the end of section 313**

Add:

- (8) The reference in subsection (7) to giving help by way of the provision of interception services includes a reference to giving help by providing relevant information about any communication that is lawfully intercepted under a warrant.

## **20 Subsection 324(2)**

Repeal the subsection, substitute:

- (2) The person must ensure that the network, facility or carriage service has the capability to enable a communication passing over the network, facility or carriage service to be intercepted in accordance with a warrant issued under the *Telecommunications (Interception) Act 1979*.

## **21 At the end of section 326**

Add:

- (4) If:
- (a) a person applies in writing to the agency co-ordinator for an exemption under subsection (1) from all the obligations, or from particular obligations, imposed on the person under Subdivision B in so far as those obligations relate to a specified carriage service; and
  - (b) the agency co-ordinator does not make, and communicate to the applicant, a decision granting, or refusing to grant, the



exemption within 60 days after the day on which the agency co-ordinator receives the application;  
the agency co-ordinator is taken, at the end of that period of 60 days, to have granted an exemption to the applicant from the obligations to which the application relates in so far as those obligations relate to the carriage service.

- (5) An exemption that is taken under subsection (4) to have been granted to a person who applied for an exemption under subsection (1) has effect only until the agency co-ordinator makes, and communicates to the person, a decision on the application.

## **22 Subsection 329(1)**

After “written instrument”, insert “, signed by the chief executive officer of the carrier or provider or by a person authorised by the chief executive officer to sign the instrument,”.

## **23 Paragraph 329(1)(a)**

Repeal the paragraph, substitute:

- (a) a statement of the policies of the carrier or provider in relation to interception generally and of its strategies for compliance with its legal obligation to provide interception capabilities in relation to each carriage service that involves, or will involve, the use of a controlled network, or controlled facility, of the carrier or provider; and
- (aa) a statement of the compliance by the carrier or provider with its legal obligation referred to in paragraph (a); and

## **24 Section 330**

Repeal the section, substitute:

### **330 Carriers’ obligations in relation to IC plans**

- (1) A carrier must lodge an IC plan with the ACA and the agency co-ordinator:
- (a) unless paragraph (b) or (c) applies—by 1 July in the calendar year following the calendar year in which this section commences and by each following 1 July; or
- (b) if the carrier became a carrier before the commencement of this section and had not lodged an IC plan before that time—

- within 90 days after the commencement of this section and by each following 1 July; or
- (c) if the carrier becomes a carrier after the commencement of this section—within 90 days after the day of so becoming a carrier and by each following 1 July.
- (2) Despite subsection (1), a carrier who lodges a first IC plan less than 120 days before the next following 1 July is not obliged under this section to lodge another IC plan before the first anniversary of that next following 1 July.

## **25 Subsections 331(1) and (2)**

Repeal the subsections, substitute:

- (1) A carriage service provider nominated under subsection (3) must lodge an IC plan with the ACA and the agency co-ordinator:
- (a) unless paragraph (b) or (c) applies—by 1 July in the calendar year following the calendar year in which this section commences and by each following 1 July; or
- (b) if the nominated carriage service provider became a nominated carriage service provider before the commencement of this section and had not lodged an IC plan before that time—within 90 days after the commencement of this section and by each following 1 July; or
- (c) if the nominated carriage service provider becomes a nominated carriage service provider after the commencement of this section—within 90 days after the day of so becoming a nominated carrier and by each following 1 July.
- (2) Despite subsection (1), a nominated carriage service provider who lodges a first IC plan less than 120 days before the next following 1 July is not obliged under this section to lodge another IC plan before the first anniversary of that next following 1 July.

## **26 Part 34 (heading)**

Repeal the heading, substitute:

## **Part 34—Special provisions relating to functions and powers of the ACA and the Attorney-General in respect of telecommunications**

### **27 Subsection 581(3)**

Repeal the subsection, substitute:

(3) If:

- (a) a person who is a carrier or carriage service provider proposes to use, or uses, for the person's own requirements or benefit, or proposes to supply, or supplies, to another person, one or more carriage services; and
- (b) the Attorney-General, after consulting the Prime Minister and the Minister administering this Act, considers that the proposed use or supply would be, or the use or supply is, as the case may be, prejudicial to security;

the Attorney-General may give to the carrier or carriage service provider a written direction not to use or supply, or to cease using or supplying, as the case may be, the carriage service, or all of the carriage services.

(3A) A direction under subsection (3) must relate to a carriage service generally and cannot be expressed to apply to the supply of a carriage service to a particular person, particular persons or a particular class of persons.

(4) A person must comply with a direction given to the person under subsection (1) or (3).

(5) In this section:

*security* has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

### **28 At the end of paragraph 1(a) of Schedule 4**

Add "(other than a decision made in compliance with section 56A or 58A)".

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*[Minister's second reading speech made in—  
House of Representatives on 26 June 2003  
Senate on 19 August 2003]*

(94/03)