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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Communications Legislation  
Amendment Bill (No. 2) 2003**

**No.     , 2003**

*(Communications, Information Technology and the Arts)*

**A Bill for an Act to amend legislation related to  
communications, and for related purposes**



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1     **A Bill for an Act to amend legislation related to**  
2     **communications, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Communications Legislation*  
6                     *Amendment Act (No. 2) 2003*.

7     **2 Commencement**

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

10    **3 Schedule(s)**

11                    Each Act that is specified in a Schedule to this Act is amended or  
12                    repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

4

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

5

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

6 Insert:

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

9

### *Australian Security Intelligence Organisation Act 1979*

10

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

11 Add:

12 ; or (d) the exercise of a power under section 58A, or subsection  
13 581(3), of the *Telecommunications Act 1997*.  
14

15

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

16 Insert:

17 (1A) This section does not apply to a security assessment if section 38A  
18 applies to the assessment.

19

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

20 Insert:

21

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

- 22
- 23 (1) This section applies to an adverse or qualified security assessment  
24 in respect of a person (the *assessed person*) if the assessment is  
25 given to the Attorney-General in connection with section 58A, or  
26 subsection 581(3), of the *Telecommunications Act 1997*.
- 27 (2) Within 14 days after receiving the assessment, the  
28 Attorney-General must:
- 29 (a) give to the assessed person a notice in writing, to which a  
30 copy of the assessment is attached, informing the assessed

- 1 person of the making of the assessment and containing  
2 information, in the form prescribed for the purposes of  
3 subsection 38(1), concerning his or her right to apply to the  
4 Tribunal under this Part; and  
5 (b) if the assessment relates to subsection 581(3) of the  
6 *Telecommunications Act 1997* and the assessed person is not  
7 the carrier or carriage service provider referred to in that  
8 subsection—notify the carrier or carriage service provider in  
9 writing of the fact that the assessment has been made.
- 10 (3) Subsection (2) does not apply if the Attorney-General is satisfied  
11 that withholding the notice or notices is essential to the security of  
12 the nation.
- 13 (4) If the Attorney-General is satisfied that the assessment contains  
14 any matter the disclosure of which would be prejudicial to the  
15 interests of security, then the Attorney-General must exclude that  
16 matter from the copy provided under paragraph (2)(a).

17 ***Telecommunications Act 1997***

18 **5 Section 7 (paragraph (f) of the definition of agency)**

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

20 **6 After section 53**

21 Insert:

22 **53A Copy of application to be given to agency co-ordinator**

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

28 **7 Subsection 55(1)**

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

30 **8 At the end of section 55**

31 Add:

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1 (3) In this section:

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

## 4 **9 After section 56**

5 Insert:

### 6 **56A Consultation with agency co-ordinator**

7 (1) The ACA must not grant a carrier licence unless it has consulted  
8 the agency co-ordinator about the licence application.

9 (2) Within 15 business days after the date on which the ACA received  
10 the licence application, the agency co-ordinator may give a written  
11 notice to the ACA, stating that the agency co-ordinator does not  
12 require any further consultation about the application. The notice  
13 cannot be revoked.

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

16 (3) Within 15 business days after the date on which the ACA received  
17 the licence application, the agency co-ordinator may give a written  
18 notice to the ACA:

19 (a) stating that, while the notice remains in force, the ACA must  
20 not grant the carrier licence; and

21 (b) specifying the period during which the notice remains in  
22 force (unless earlier revoked), which period cannot end more  
23 than 3 months after the date of the notice.

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

27 (4) At any time while a notice is in force under subsection (3), or  
28 under this subsection, the agency co-ordinator may give a further  
29 written notice to the ACA:

30 (a) stating that, while the notice remains in force, the ACA must  
31 not grant the carrier licence; and

32 (b) specifying the period during which the notice remains in  
33 force (unless earlier revoked), which period cannot end more  
34 than 3 months after the date of the notice or more than 12  
35 months after the date of the notice under subsection (3).

- 1 (5) The agency co-ordinator may, by notice in writing to the ACA,  
2 revoke a notice under subsection (3) or (4).
- 3 (6) The agency co-ordinator cannot issue a further notice under  
4 subsection (3) or (4) in respect of the application after it has  
5 revoked such a notice.
- 6 (7) The ACA must give the applicant a copy of each notice that the  
7 ACA receives from the agency co-ordinator under subsection (3),  
8 (4) or (5).
- 9 (8) The ACA must not grant the carrier licence while a notice is in  
10 force under subsection (3) or (4).
- 11 (9) In this section:
- 12 *business day* means a day on which the ACA is open for business  
13 in the Australian Capital Territory and in Victoria.

14 **10 After section 58**

15 Insert:

16 **58A Refusal of carrier licence—security**

- 17 (1) If the Attorney-General, after consulting the Prime Minister and  
18 the Minister administering this Act, considers that the grant of a  
19 carrier licence to a particular person would be prejudicial to  
20 security, the Attorney-General may give a written direction to the  
21 ACA not to grant a carrier licence to the person.
- 22 (2) The ACA must comply with a direction under subsection (1).
- 23 (3) While a direction is in force under this section:
- 24 (a) the ACA cannot reconsider a non-compulsory refusal to grant  
25 a carrier licence to the person; and
- 26 (b) the Administrative Appeals Tribunal cannot consider an  
27 application for review of a non-compulsory refusal to grant a  
28 carrier licence to the person.
- 29 (4) If an application for a carrier licence is pending at the time when  
30 the Attorney-General gives a direction to the ACA under this  
31 section, then the application lapses.
- 32 Note: Section 73A provides for refund of the application charge.

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1 (5) In this section:

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

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

## 6 **11 Section 59**

7 Repeal the section, substitute:

### 8 **59 Time limit on licence decision**

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

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

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

15 (2) If:

- 16 (a) the ACA did not give a section 55 request; and  
17 (b) there is no section 56A notice in force at the end of the 20th  
18 business day after the application day;

19 then the deadline day is the 20th business day after the application  
20 day.

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

22 (3) If:

- 23 (a) the ACA did not give a section 55 request; and  
24 (b) there is a section 56A notice in force at the end of the 20th  
25 business day after the application day;

26 then the deadline day is the fifth business day after the section 56A  
27 expiration day. For this purpose, the *section 56A expiration day* is  
28 the first day after the end of that 20th business day on which there  
29 is no notice in force under section 56A.

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

- 3                    (4) If:
- 4                    (a) the ACA gave a section 55 request; and
  - 5                    (b) the request was complied with; and
  - 6                    (c) there is no section 56A notice in force at the end of the tenth  
7                    business day after the day on which the request was complied  
8                    with;
- 9                    then the deadline day is the tenth business day after the day on  
10                    which the request was complied with.

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

- 13                    (5) If:
- 14                    (a) the ACA gave a section 55 request; and
  - 15                    (b) the request was complied with; and
  - 16                    (c) there is a section 56A notice in force at the end of the tenth  
17                    business day after the day on which the request was complied  
18                    with;
- 19                    then the deadline day is the fifth business day after the section 56A  
20                    expiration day. For this purpose, the *section 56A expiration day* is  
21                    the first day after the end of that tenth business day on which there  
22                    is no notice in force under section 56A.

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

- 25                    (6) If:
- 26                    (a) the ACA gave a section 55 request; and
  - 27                    (b) the request was not complied with; and
  - 28                    (c) there is no section 56A notice in force at the end of the tenth  
29                    business day after the day specified in the section 55 request;
- 30                    then the deadline day is the tenth business day after the day  
31                    specified in the section 55 request.

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

- 34                    (7) If:
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- 
- 1 (a) the ACA gave a section 55 request; and  
2 (b) the request was not complied with; and  
3 (c) there is a section 56A notice in force at the end of the tenth  
4 business day after the day specified in the section 55 request;  
5 then the deadline day is the fifth business day after the section 56A  
6 expiration day. For this purpose, the *section 56A expiration day* is  
7 the first day after the end of that tenth business day on which there  
8 is no notice in force under section 56A.

9 (8) In this section:

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

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

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

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

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

## 20 **12 After section 73**

21 Insert:

### 22 **73A Refund of application charge**

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

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

3                    **13 Subsection 282(10)**

4                    Insert:

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

6                    **14 Subsection 282(10)**

7                    Insert:

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

10                  **15 Subsection 282(10)**

11                  Insert:

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

14                  **16 Subsection 282(10) (paragraph (f) of the definition of**  
15                  ***criminal law-enforcement agency*)**

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

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

18                  Add:

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

21                  **18 Subsection 282(10) (paragraphs (a) to (d) of the definition**  
22                  ***of senior officer*)**

23                  Repeal the paragraphs, substitute:

- 24                                  (a) if the agency is the Australian Federal Police:
- 25    (i) the Commissioner of Police referred to in section 6 of  
26    the *Australian Federal Police Act 1979*; or
- 27    (ii) a Deputy Commissioner of Police referred to in  
28    section 6 of the *Australian Federal Police Act 1979*; or
- 29    (iii) a senior executive AFP employee (being an AFP  
30    employee in respect of whom a declaration is in force  
31    under section 25 of the *Australian Federal Police Act*

- 
- 1                   1979) who is authorised in writing by the Commissioner  
2                   of Police for the purposes of this subparagraph; or
- 3           (iv) an AFP employee (being an employee in respect of  
4                   whom a declaration is in force under section 40B of the  
5                   *Australian Federal Police Act 1979*) who is employed,  
6                   or is acting, in an office or position in the Australian  
7                   Federal Police which is involved in the management of  
8                   the Australian Federal Police and which has been  
9                   nominated in writing by the Commissioner of Police for  
10                  the purposes of this subparagraph; or
- 11           (v) the holder or occupier from time to time of an office or  
12                  position in the Australian Federal Police which is  
13                  involved in the management of the Australian Federal  
14                  Police and which has been nominated in writing by the  
15                  Commissioner of Police for the purposes of this  
16                  subparagraph; or
- 17           (b) if the agency is the police force or service of a State or  
18                  Territory:
- 19                  (i) the Commissioner of Police (however designated) of the  
20                  State or Territory; or
- 21                  (ii) a Deputy Commissioner of Police (however designated)  
22                  of the State or Territory; or
- 23                  (iii) an officer of the police force or service whose rank is  
24                  that of inspector (or equivalent) or above and who is  
25                  authorised in writing by the Commissioner of Police for  
26                  the purposes of this subparagraph; or
- 27                  (iv) an officer who holds, or is acting in, an office or  
28                  position in the police force or service who has a rank  
29                  referred to in subparagraph (iii), being an office or  
30                  position which has been nominated in writing by the  
31                  Commissioner of Police for the purposes of this  
32                  subparagraph; or
- 33                  (v) an officer of the police force or service who holds, or is  
34                  acting in, an office or position in the police force or  
35                  service which is involved in the management of the  
36                  police force or service and which has been nominated in  
37                  writing by the Commissioner of Police for the purposes  
38                  of this subparagraph; or
- 39           (c) if the agency is neither the Australian Federal Police nor the  
40                  police force or service of a State or Territory:
-

- 1 (i) the chief executive officer or an acting chief executive  
2 officer of the agency; or  
3 (ii) an officer of the agency (by whatever name called) who  
4 holds, or is acting in, an office or position in the agency  
5 which is involved in the management of the agency and  
6 which has been nominated in writing by the chief  
7 executive officer of the agency for the purposes of this  
8 subparagraph; or  
9 (d) if a group of officers of the agency perform their duties at  
10 premises that are:  
11 (i) occupied by the agency; and  
12 (ii) located at a place outside the boundaries of a capital city  
13 of a State or internal Territory;  
14 the most senior of that group of officers, being a person who  
15 has been nominated in writing by the Commissioner of  
16 Police, or other chief executive officer, of the agency for the  
17 purposes of this paragraph.

18 **19 At the end of section 313**

19 Add:

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

24 **20 Subsection 324(2)**

25 Repeal the subsection, substitute:

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

31 **21 At the end of section 326**

32 Add:

- 33 (4) If:  
34 (a) a person applies in writing to the agency co-ordinator for an  
35 exemption under subsection (1) from all the obligations, or



- 1 from particular obligations, imposed on the person under  
 2 Subdivision B in so far as those obligations relate to a  
 3 specified carriage service; and  
 4 (b) the agency co-ordinator does not make, and communicate to  
 5 the applicant, a decision granting, or refusing to grant, the  
 6 exemption within 60 days after the day on which the agency  
 7 co-ordinator receives the application;  
 8 the agency co-ordinator is taken, at the end of that period of 60  
 9 days, to have granted an exemption to the applicant from the  
 10 obligations to which the application relates in so far as those  
 11 obligations relate to the carriage service.
- 12 (5) An exemption that is taken under subsection (4) to have been  
 13 granted to a person who applied for an exemption under  
 14 subsection (1) has effect only until the agency co-ordinator makes,  
 15 and communicates to the person, a decision on the application.

## 16 **22 Subsection 329(1)**

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

## 20 **23 Paragraph 329(1)(a)**

21 Repeal the paragraph, substitute:

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

## 30 **24 Section 330**

31 Repeal the section, substitute:

### 32 **330 Carriers’ obligations in relation to IC plans**

- 33 (1) A carrier must lodge an IC plan with the ACA and the agency  
 34 co-ordinator:

- 1 (a) unless paragraph (b) or (c) applies—by 1 July in the calendar  
2 year following the calendar year in which this section  
3 commences and by each following 1 July; or  
4 (b) if the carrier became a carrier before the commencement of  
5 this section and had not lodged an IC plan before that time—  
6 within 90 days after the commencement of this section and  
7 by each following 1 July; or  
8 (c) if the carrier becomes a carrier after the commencement of  
9 this section—within 90 days after the day of so becoming a  
10 carrier and by each following 1 July.
- 11 (2) Despite subsection (1), a carrier who lodges a first IC plan less  
12 than 120 days before the next following 1 July is not obliged under  
13 this section to lodge another IC plan before the first anniversary of  
14 that next following 1 July.

15 **25 Subsections 331(1) and (2)**

16 Repeal the subsections, substitute:

- 17 (1) A carriage service provider nominated under subsection (3) must  
18 lodge an IC plan with the ACA and the agency co-ordinator:  
19 (a) unless paragraph (b) or (c) applies—by 1 July in the calendar  
20 year following the calendar year in which this section  
21 commences and by each following 1 July; or  
22 (b) if the nominated carriage service provider became a  
23 nominated carriage service provider before the  
24 commencement of this section and had not lodged an IC plan  
25 before that time—within 90 days after the commencement of  
26 this section and by each following 1 July; or  
27 (c) if the nominated carriage service provider becomes a  
28 nominated carriage service provider after the commencement  
29 of this section—within 90 days after the day of so becoming  
30 a nominated carrier and by each following 1 July.
- 31 (2) Despite subsection (1), a nominated carriage service provider who  
32 lodges a first IC plan less than 120 days before the next following  
33 1 July is not obliged under this section to lodge another IC plan  
34 before the first anniversary of that next following 1 July.

35 **26 Part 34 (heading)**

36 Repeal the heading, substitute:

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

5 **27 Subsection 581(3)**

6 Repeal the subsection, substitute:

7 (3) If:

8 (a) a person who is a carrier or carriage service provider  
9 proposes to use, or uses, for the person's own requirements  
10 or benefit, or proposes to supply, or supplies, to another  
11 person, one or more carriage services; and

12 (b) the Attorney-General, after consulting the Prime Minister and  
13 the Minister administering this Act, considers that the  
14 proposed use or supply would be, or the use or supply is, as  
15 the case may be, prejudicial to security;

16 the Attorney-General may give to the carrier or carriage service  
17 provider a written direction not to use or supply, or to cease using  
18 or supplying, as the case may be, the carriage service, or all of the  
19 carriage services, either generally or to a particular person or  
20 particular persons.

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

23 (5) In this section:

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

26 **28 At the end of paragraph 1(a) of Schedule 4**

27 Add "(other than a decision made in compliance with section 56A or  
28 58A)".