



## Telecommunications Amendment (Integrated Public Number Database) Bill 2009

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## **Telecommunications Amendment (Integrated Public Number Database) Bill 2009**

**Date introduced:** 23 February 2009

**House:** House of Representatives

**Portfolio:** Broadband, Communications and the Digital Economy

**Commencement:** The day after Royal Assent

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### **Purpose**

The primary purpose is to amend the *Telecommunications Act 1997* to allow information contained in the Integrated Public Number Database (IPND) to be disclosed for the development and implementation of telephone based emergency warnings systems by the States and Territories.

### **Background**

#### **Integrated Public Number Database**

The Integrated Public Number Database (IPND) is an industry-wide database that contains information related to all listed and unlisted public telephone numbers in Australia, regardless of the service provider. It was established in 1998 and is managed by Telstra under the *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*.

The IPND contains public number customer data which includes a public number and associated information such as the customer's name and address and the name of the service provider providing the carriage service. This data may only be accessed and used for the approved purposes specified in clause 10(1) of Telstra's Carrier Licence which are:

- providing directory assistance services
- providing operator services or operator assistance services
- publishing public number directories
- providing location dependent carriage services

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- the operation of emergency call services or assisting emergency services
- assisting enforcement agencies or safeguarding national security, and
- any other activities specified by the Australian Communications and Media Authority (ACMA) by written notice to the IPND Manager (which is Telstra).<sup>1</sup>

Telstra, as the IPND Manager, is responsible for maintaining the IPND and its integrity. The IPND Manager receives data from registered data providers, and provides data to data users.<sup>2</sup>

### Legislative framework of the IPND

The Telecommunications Act set up the regulatory framework that established the IPND in 1998. Part 4 of Schedule 2 of that Act, which sets out service provider rules, states that it is compulsory for all carriage service providers that supply a carriage service to an end user using a public number to provide the public number and related customer data to the IPND Manager (currently Telstra). There are also obligations on carriage service providers to ensure that the information provided to the IPND Manager is at all times as accurate and current as possible.<sup>3</sup>

Access to the IPND is governed by Part 13 of the Telecommunications Act and the 'Integrated Public Number Database (IPND) Data provider, Data User and IPND Manager' Code developed by the Australian Communications Industry Forum. Division 2 of Part 13 of the Act provides general prohibitions on the disclosure and use of people's personal information provided to carriage service providers unless it is authorised by an exception in Division 3 of Part 13 of the Act.

The existing exceptions contained in the Act enable IPND data to be used by certain organisations including carriage service providers, law enforcement agencies, national security agencies, emergency services organisations, the Australian Competition and Consumer Commission, the ACMA and the Telecommunications Industry Ombudsman; or for certain purposes including the provision of directory assistance services and the publication or maintenance of a directory of public numbers.

### Basis of policy commitment

With a death toll of 210 people,<sup>4</sup> the Victorian bushfires in February 2009 have been described as Australia's worst natural disaster.<sup>5</sup> In the wake of this disaster, questions have

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1. [Integrated Public Number Database \(IPND\) Fact sheet](#). Accessed 5 March 2009.

2. *ibid.*

3. *ibid.*

4. 'Victoria Police bushfire update', media release, 5 March 2009, at: [http://www.police.vic.gov.au/content.asp?Document\\_ID=19190](http://www.police.vic.gov.au/content.asp?Document_ID=19190).

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been raised about whether a telephone emergency warning system would have helped alert people of the imminent disaster and whether the IPND should have been available to enable warning calls to be made to all landlines and mobile phones in a threatened area. Some media reports suggested that the development of such a system had been relatively slow and that Government inaction had hindered development of some of the State's alerting systems.<sup>6</sup> It was also reported that access to the IPND, considered to be necessary for the development of these systems,<sup>7</sup> had been hampered at Commonwealth level.<sup>8</sup>

Both the coalition and the Government have been keen to show that their respective Governments were actively supporting the development of both State telephone warning systems and moves to a more coordinated national approach.

Senator Helen Coonan, now Shadow Minister for Foreign Affairs, has refuted the media claims regarding Government inaction.<sup>9</sup> She states that in 2007, as the then Minister for Communications, she approved access to the IPND for a Western Australian trial emergency warning system. Furthermore in the same year she had also written to the then Commonwealth Attorney-General recommending both the merits of a Telstra warning system and that its implementation should be considered. The press release continues:

Even with the change in federal government in November 2007, there should have been minimal delay implementing a warning system as the Department of Communications had been well briefed about the technology and WA trial.<sup>10</sup>

The Minister for Broadband, Communications and the Digital Economy, Senator the Hon. Stephen Conroy, and the Attorney-General, the Hon Robert McClelland, in a joint press release, state that in 2008, the Rudd Government placed the issue of a telephone-based

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5. In terms of destruction, current estimates indicate Victorian communities will need to clean-up approximately 2029 homes, 11 community buildings, 59 commercial buildings and 2385 agricultural sheds, dairies and machinery. Premier John Brumby, 'Thousands of properties to be cleared up', media release, 27 February 2009. At: <http://www.premier.vic.gov.au/premier/thousands-of-properties-to-be-cleared-during-bushfire-clean-up.html>
  6. For example 'Ministers blocked warning system', *Australian*, 18 February 2009. The article reports that the West Australian Government had requested access to the IPND from September 2007 to bring online its StateAlert system.
  7. There are clear advantages in using data sourced from the IPND for telephone based emergency warnings as it is the most comprehensive and accurate Australian public number database available.
  8. 'Ministers blocked warning system', *Australian*, 18 February 2009.
  9. Senator H. Coonan, 'Early warning system 'bungle': clarification', Liberal Party of Australia, February 2009.
  10. *ibid.*

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emergency system on the agenda of the Council of Australian Governments (COAG).<sup>11</sup> COAG agreed it was a priority and commissioned the work necessary to reach agreement by the end of 2008. The work was completed, and agreement was achieved in November 2008.<sup>12</sup> The press release continues:

This agreement was necessary to address important concerns such as ensuring telephone-based emergency warning systems do not overload and disable the telecommunications network (including access to the 000 emergency hotline) and the security of individuals' personal information.

In accordance with the agreement the Government immediately commenced drafting legislation to authorise access to the IPND. The necessary legislation and database the Government is putting in place will enable the States and Territories to access the data needed to develop their own warning systems as soon as possible.<sup>13</sup>

The issues related to developing and implementing a telephone based emergency warning systems are beyond the scope of this Bills Digest. It is important to clarify that the Bill does not seek to set up such a system— rather the Bill has the very limited purpose of facilitating access to the IPND for the purpose of developing and implementing emergency warning systems.

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11. Senator S. Conroy and R. McClelland 'Rudd Government implements COAG agreement on telephone-based emergency warning systems', media release, 23 February 2009.

12. The COAG website provides the following report of the [2 October 2008 meeting](#):

COAG noted the Ministerial Council on Police and Emergency Management – Emergency Management report on the progress of developing a nationally-consistent, telephone-based community emergency warning system. A nationally-consistent community emergency warning system will enhance the current capability to provide timely and accurate warnings in the event of emergencies, and provide useful information and advice on individual and community responses. COAG has requested that all remaining tasks, including a cost-benefit analysis, be completed by the end of 2008.

A copy of the Ministerial Council for Police and Emergency Management report on an emergency warning system does not appear to be publicly available.

13. The press release also indicates that the Commonwealth has advised the States and Territories that if they are able to agree to a national system at the next COAG meeting the Commonwealth will make a further financial contribution to establish such a system, to be owned and operated by the States and Territories.

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Telecommunications Amendment Regulations (No. 1), Select Legislative Instrument 2009 No. 31.

It is of note that at the time of introduction of this Bill, the Government also tabled a Regulation with a similar purpose of enabling interim access to the IPND for emergency warnings.<sup>14</sup> The intent of the Regulation was to fast track the changes to provide immediate access to the database in light of the bushfire emergency situation in Victoria. The regulation took effect on 23 February 2009.<sup>15</sup>

## Financial implications

The Explanatory Memorandum states that the Bill is not expected to have any financial impact on Commonwealth expenditure or revenue.<sup>16</sup>

## Main provisions

Schedule 1—Amendments to the *Telecommunications Act 1997*

### Part 1—Data for emergency warnings amendment

As noted above, Part 13 of the Telecommunications Act regulates the use and disclosure of information obtained by certain bodies such as carriers and carriage service providers during the supply of telecommunication services. More specifically sections 276 and 277 prohibit, amongst other things, the disclosure or use of information released from an IPND in connection with the delivery of telecommunications services by carriers, carriage service providers or their employees and contractors. Offences are punishable by up to two years imprisonment. A number of exceptions to these prohibitions are specified in section 285 which allows disclosure of information from the IPND for a number of reasons, including for the delivery of telecommunications services, the publishing of public number directories, emergency call purposes and law enforcement purposes.

**Proposed section 285A (item 2)** is a key provision of the Bill. It effectively provides another exception to the prohibitions in sections 276 and 277 and would allow disclosure of data and information for emergency warnings. The new section 285A provides that data from an ‘integrated public number database’ (including unlisted telephone numbers) may

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14. Telecommunications Amendment Regulations (No. 1). Select Legislative Instrument 2009 No. 31.

15. Although this would be subject to the normal disallowance procedures under the *Legislative Instruments Act 2003*.

16. Explanatory Memorandum, p. 4.

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be disclosed to an ‘emergency management person’, providing it is for the purpose of the information being later used or disclosed for:

- a purpose connected with persons being alerted to an ‘emergency’ or a likely emergency, or
- a purpose of reasonable testing of such alerts.

For the purposes of this section an *integrated public number database* means either the IPND currently maintained by Telstra,<sup>17</sup> or an integrated public number database as determined by the Communications Minister under section 472<sup>18</sup> (**new subsection 285A(2)**).

An ‘*emergency management person*’ is a position or person specified by a legislative instrument by the Attorney-General after consultation with the Communications Minister (**proposed section 275**). It could include State or Territory positions or offices (**proposed subsection 275(B)(3)**). The emergency management person would have powers and responsibilities in connection with alerting persons to a likely or actual emergencies and for the reasonable testing of such alerts.<sup>19</sup>

An ‘*emergency*’ is defined as an emergency or disaster within the meaning of emergency law (**proposed section 275C**). The Attorney-General may by legislative instrument specify a State or Territory law to be an ‘*emergency law*’ (**proposed section 275D**).

### **New Division 3B—Emergency warnings**

**Item 3** inserts a **new Division 3B** into Part 13 which details the circumstances in which an emergency management person may use and disclose IPND information and also includes penalty provisions and reporting obligations in relation to these new powers.

**Proposed section 295V** provides that an emergency management person may use or disclose data or information from the IPND (other than the names of persons) for the purpose of:

- alerting persons to likely or actual emergencies (**proposed subsections 295V(1) and (2)**)
- reasonable testing of whether, in the event of an emergency occurring, persons would be able to be alerted to that emergency (**proposed subsection 295V(3)**)

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17. As mentioned in Part 4 of Schedule 2 of the Telecommunications Act.

18. Section 472 of the Telecommunications Act allows the Minister to make a determination allowing a specified person (other than Telstra) to provide and maintain an integrated public number database.

19. Explanatory Memorandum, p. 5.

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- the information being later used or disclosed for a purpose connected with persons being alerted to an emergency or likely emergency (**proposed subsection 295V(4)**).

**Proposed section 295W** deals with secondary uses or disclosures. If information is disclosed to a person as permitted by section 295V then that person may use or disclose the information for a purpose of:

- alerting persons to likely or actual emergencies (**proposed subsection 295W(1)**)
- reasonable testing of whether, in the event of an emergency occurring, persons would be able to be alerted to that emergency (**proposed subsection 295V(2)**)
- the information being used or disclosed for another purpose connected with persons being alerted to an emergency or likely emergency (**proposed subsection 295V(3)**).

**Proposed section 295X** requires that when using or disclosing the relevant information from the IPND, the person must take reasonable steps to ensure that use or disclosure does not adversely affect the operation of a telecommunications network. The Explanatory Memorandum states that for instance, telephone subscribers in the geographic area affected must still be able to make outbound calls, especially to 000, while an emergency warning is being transmitted.<sup>20</sup>

**Proposed section 295Y** confirms that disclosure of relevant information to a coronial inquiry, or to another inquiry specified by the Attorney-General by a legislative instrument is permitted where disclosure is in relation to an emergency or likely emergency.

**Proposed sections 295Z** and **295ZA** are offence provisions. There are penalties of up to two years imprisonment for misuse of the IPND data. These are similar penalties to other provisions dealing with illegal disclosure and use of communications data.

**Proposed sections 295ZB** and **295ZC** contain reporting obligations for emergency management persons. Each time an emergency management person discloses relevant information they must give a report to the Attorney-General and the ACMA as soon as practicable (**proposed section 295ZB**). The report must include a description of the emergency or likely emergency, the number of telephone numbers disclosed, the number of persons to whom the disclosure was made and the purpose of the disclosures (**paragraphs 295ZC(a) to (c)**). Emergency management persons must also submit annual reports to the ACMA and the Privacy Commissioner containing similar information relating to disclosures (**proposed section 295ZC**).

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20. Explanatory Memorandum, p. 2.

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**Proposed section 295ZE** provides the Commonwealth with immunity from action against it in relation to loss, damage or injury as a result of the use or disclosure of relevant information. The Explanatory Memorandum explains the rationale for this provision.<sup>21</sup>

## **Part 2—Location Dependent Carriage Services**

The Bill also contains amendments that will clarify provisions in the Telecommunications Act which relate to the disclosure and use of IPND data for delivering location dependent carriage services (LDCS).

LDCS are services which automatically route calls to the appropriate store or branch location of a business, depending on the location of the caller. Examples of businesses commonly using this type of service include pizza delivery and taxi services. They are generally services provided using 13 or 1300 numbers.<sup>22</sup>

Currently the Act does not contain express authority for disclosure and use of information in the IPND for the purpose of providing LDCSs on a wide scale. The Explanatory Memorandum states that current access to the IPND for the provision of LDCS is only permitted to carriers and carriage service providers and only where the IPND information relates to a current or former subscriber of that particular carrier or content service provider.

The amendments in **Part 2** of the Bill would allow LDCS providers to access listed public number information in the IPND for the purpose of supplying large-scale LDCS.

**Item 5** inserts **proposed subsections 291A(1)** and **291A(2)** to provide additional exceptions to the primary use and disclosure offence provisions set out in sections 276 and 277 of the Telecommunications Act. These subsections would expressly permit disclosure and use of information or documents relating to the IPND for the purpose of providing a LDCS.

The Bill provides two significant privacy protections in relation to this new provision:

- information relating to unlisted telephone numbers is specifically excluded from the permitted disclosure provisions in subsections 291A(1) and 291A(2) thus protecting the privacy of persons with unlisted telephone numbers
- additional secondary disclosure and use offences in **proposed subsection 302A(1) (item 6)** to protect against improper disclosure and use of information from the IPND for the purpose of providing a LDCS. The offence is punishable by up to two years imprisonment (existing section 303).

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21. Explanatory Memorandum, p. 8.

22. *ibid.*, p. 3.

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## Concluding comments

The Bill has bipartisan support and is being considered with some urgency by the Parliament. Debate since the February bushfires suggests that politicians in all parties are keen to promote any emergency warning system that might in some way help to prevent a repeat of the disastrous loss of life and property that occurred in Victoria. Indeed, the urgency of the Bill has largely been superseded due to the introduction of a Regulation that came into effect at the same time as this Bill's introduction.<sup>23</sup> That Regulation allows interim access to the IPND for the purpose of setting up and using emergency systems.

It should also be clarified that this Bill has quite a limited purpose. It does not seek to set up any emergency warning system—rather it facilitates access to the IPND as an input to such systems. The IPND, because of its comprehensive and accurate content is the ideal source of data. However facilitating access to the IPND is a relatively minor and straightforward part of the bigger, more complex picture of establishing a coordinated telephone-based emergency warning system. While that bigger picture is beyond the scope of this Digest, it is worth noting that there are challenges ahead to address the complex and costly technological issues and to accommodate the differing needs of the States and Territories in a nationally consistent telephone-based early warning emergency system.

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23. Telecommunications Amendment Regulations (No. 1). Select Legislative Instrument 2009 No. 31.

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