

April 2019

# AEC Policy on the use of section 313 of the *Telecommunications Act*

# AEC policy on the use of section 313(3) of the *Telecommunications Act 1997*

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Section 313(3) of the *Telecommunications Act 1997* (Telecommunications Act) enables Commonwealth enforcement entities such as the Australian Electoral Commission (AEC) to block websites containing illicit or contravening material. This policy sets out how the AEC will make a disruption request under section 313(3). The policy reflects the [Guidelines for the use of section 313\(3\) of the Telecommunications Act 1997 by government agencies for the lawful disruption of access to online services](#) (June 2017) issued by the Department of Communications and the Arts (Guidelines), which set out good practice measures for promoting the transparent, accountable and responsible use of section 313(3) by Commonwealth enforcement entities.

This policy sets out:

- the AEC's roles and responsibilities;
- a description of the section 313(3) power;
- the guiding principles the AEC takes into account in making a disruption request; and
- how the AEC will inform the public and how members of the public can request a review in respect of the use of the power.

## The AEC's roles and responsibilities

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As Australia's national electoral agency, the AEC plays the leading role in maintaining the integrity of the Australian electoral system. The AEC is responsible for conducting federal elections and referendums and maintaining the Commonwealth electoral roll in accordance with the *Commonwealth Electoral Act 1918* (Electoral Act). The AEC also provides a range of electoral information and education programs and activities.

The purpose of the AEC is to:

*Maintain an impartial and independent electoral system for eligible voters through active electoral roll management, efficient delivery of polling services and targeted education and public awareness programs.*

The AEC has one program:

*1.1 To deliver electoral events.*

The AEC's functions are to:

- ensure confidence in the electoral roll;
- conduct successful electoral events, including federal elections, by-elections, referendums and industrial and commercial elections;
- undertake education and public awareness activities;

- administer political party registrations and financial disclosure; and
- support electoral redistributions.

## The power to disrupt online services

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Section 313(3) of the Telecommunications Act requires that carriers or carriage service providers, in connection with

- their operation or provision of telecommunications networks or facilities; or
- the supply by the carrier or provider of carriage services,

give officers and authorities of the Commonwealth, States and Territories any help reasonably necessary to:

- enforce the criminal law and laws imposing pecuniary penalties;
- assist in the enforcement of the criminal laws in force in a foreign country;
- protect the public revenue; or
- safeguard national security.

Section 313(3) enables the AEC to request an Internet Service Provider (ISP) to provide such assistance as is reasonably necessary to disrupt the operation of online services by blocking access to websites.

In accordance with the Guidelines, the AEC will only use the power in section 313(3) to disrupt access to internet communications that involve serious criminal or civil offences under the Electoral Act. The Electoral Act requires persons participating in public debate relating to federal elections to be accountable for their communications. For example, the Electoral Act requires certain electoral communications to be authorised so that voters know who is communicating an electoral matter to them. The Guidelines state that agencies should only use section 313(3) to disrupt access in cases involving 'serious criminal or civil offences, or threats to national security'. The Guidelines specify that an appropriate threshold for this test is offences that carry a maximum prison term of at least two years, or a financial penalty of at least 120 Commonwealth penalty units. AEC officers will take this into consideration when considering a potential use of section 313(3).

## Who can request online services be disrupted?

The Electoral Commissioner has directed that Senior Executive Service level officers, or acting Senior Executive Service level officers in the AEC, must approve individual requests under section 313(3) to disrupt access to online services.

# Guiding principles in making a request to disrupt online services

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When considering whether to make a request to disrupt online services, the AEC will take into account relevant factors and follow certain processes to:

- determine whether a disruption is warranted and necessary;
- obtain the necessary approval; and
- if a disruption request is made and implemented, monitor, evaluate and report on the outcome of the disruption.

When making a disruption request, the AEC will take steps to ensure that the request is as targeted as possible, effective and executed appropriately.

## Relevant factors

Before making a disruption request, the AEC will consider the following factors to determine whether the disruption request is warranted and necessary, including:

- whether the AEC is conducting an investigation into a serious criminal offence or a civil contravention that meets the thresholds mentioned in the Guidelines;
- the availability of other enforcement tools, such as injunctions;
- the range of services on the site;
- the harm being caused by the online services;
- the likely effectiveness of the proposed disruption;
- the view of the ISP;
- technical feasibility and costs involved in the proposed disruption;
- potential consequences and/or damage to government;
- the nature and seriousness of the offence or contravention; and
- whether there is a public or national interest in disrupting access.

## Consultation

The AEC will consult with the relevant carriers or ISPs at an early stage about the proposed disruption, unless there is a material risk that doing so will compromise the investigation. The AEC will consult to obtain their views on the proposed disruption, the best means of complying with requests for assistance and the management of associated costs.

## Post-request

Each disruption request will be monitored and evaluated by the AEC. The disruptions will be checked regularly to ensure the disruption remains appropriate and does not have unintended consequences.

Any contact from members of the public about the disruption will be noted and acted on if necessary. Complaints about the disruption will be handled in accordance with the [AEC's complaint management policy](#).

## Transparency

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The AEC will notify the domain owner of the relevant website each time it makes a disruption request under section 313(3).

The AEC may publish each disruption request and include why the request has been made in accordance with the Guidelines. However, the AEC will not publish a disruption request if the report may jeopardise ongoing or planned investigations, interfere with operational activities, or give rise to other law enforcement or national security concerns.

Wherever practical and reasonable in the particular circumstances, the AEC will inform the public each time it makes a disruption request by:

- publishing a notice on the disrupted website advising that access to a particular site has been stopped (a 'stop page'). The stop page will advise that the AEC has requested the disruption and provide reasons for the request; and
- issuing a media release advising that the power has been used and provide reasons for this.

Both the stop page and the media release will include details of how parties that are adversely affected by the disruption may complain to the AEC.

The AEC will report annually to the Australian Communications and Media Authority (ACMA) on the number of disruption requests the AEC has made during the year. ACMA is responsible for reporting annually to Parliament on all requests made by government agencies during the year. Further, the AEC will provide information about the number of disruption requests made each year in the AEC's annual report.

## How to request a review or make a complaint

Parties adversely affected by the disruption or members of the public who are aggrieved by the disruption will be able to lodge a complaint with the AEC: see the [AEC's complaint management policy](#). The stop page and media release will provide contact details so affected parties may complain to the AEC.

## Other relevant information

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### Legislation

- [Commonwealth Electoral Act 1918](#)
- [Telecommunications Act 1997](#)

### AEC policies and guides

- [AEC complaint management policy](#)

### Other

- [ACMA website](#)
- [Department of Communications and the Arts website](#)
- Department of Communication and the Arts, [Guidelines for the use of section 313\(3\) of the Telecommunications Act 1997 by government agencies for the lawful disruption of access to online services](#), June 2017
- House of Representatives Standing Committee on Infrastructure and Communications, [Balancing freedom and protection: Inquiry into the use of section 313\(3\) of the Telecommunications Act 1997 by government agencies to disrupt the operation of illegal online services](#), June 2015