



New South Wales

Communications Interception Legislation Amendment (Ombudsman Oversight) Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to:

- (a) provide for the Ombudsman to monitor the use of listening devices under the *Listening Devices Act 1984*, and to enable the Ombudsman to report to Parliament and to the Attorney General on the Ombudsman's findings and recommendations, and
- (b) enable the Ombudsman to furnish to Parliament reports made by the Ombudsman to the Minister administering the *Telecommunications (Interception) (New South Wales) Act 1987* under that Act.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Listening Devices Act 1984* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Telecommunications (Interception) (New South Wales) Act 1987* set out in Schedule 2.

Schedule 1 Amendment of Listening Devices Act 1984

Section 5 of the *Listening Devices Act 1984* requires a person who uses a listening device without a warrant or authority to obtain evidence in connection with an imminent threat of serious violence or substantial damage to property, or a serious narcotics offence, to report to the Attorney General on the circumstances in which the device was used, and other matters. **Schedule 1 [2]** amends section 5 to require such a report to be provided to the Ombudsman as well as to the Attorney General.

Section 19 of the *Listening Devices Act 1984* requires a person to whom a warrant has been granted to authorise use of a listening device to report to a Judge and to the Attorney General on specified matters about the use of the device, and also about the retrieval of the device in certain circumstances. **Schedule 1 [3]** amends section 19 to require such a report to be provided to the Ombudsman as well as to the Attorney General and a Judge.

Schedule 1 [4] inserts a new Part that enables the Ombudsman to monitor the use and retrieval of listening devices, and the use made of any evidence or information obtained by the use of listening devices, on the basis of reports provided to the Ombudsman. The Ombudsman may report on his or her findings or recommendations to the Attorney General, or to the Presiding Officer of each House of Parliament, or to both the Attorney General and the Presiding Officer of each House of Parliament.

Schedule 1 [1] makes a consequential amendment. **Schedule 1 [5]** provides for transitional matters

Schedule 2 Amendment of Telecommunications (Interception) (New South Wales) Act 1987

Section 11 of the *Telecommunications (Interception) (New South Wales) Act 1987* requires the Ombudsman to report to the Minister administering that Act about the Ombudsman's inspections of the records kept by authorities about warrants to intercept telecommunications issued under the *Telecommunications (Interception) Act 1987* of the Commonwealth. **Schedule 2 [1]** enables the Ombudsman to provide such a report to the Presiding Officer of each House of Parliament. **Schedule 2 [2]** makes a related amendment.



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New South Wales

Communications Interception Legislation Amendment (Ombudsman Oversight) Bill 2002

No. , 2002

A Bill for

An Act to amend the *Listening Devices Act 1984* and the *Telecommunications (Interception) (New South Wales) Act 1987* to confer powers on the Ombudsman with respect to the oversight of requirements relating to listening devices and with respect to reporting to Parliament; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Communications Interception Legislation Amendment (Ombudsman Oversight) Act 2002</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Listening Devices Act 1984 No 69	7
The <i>Listening Devices Act 1984</i> is amended as set out in Schedule 1.	8
4 Amendment of Telecommunications (Interception) (New South Wales) Act 1987 No 290	9 10
The <i>Telecommunications (Interception) (New South Wales) Act 1987</i> is amended as set out in Schedule 2.	11 12

Schedule 1	Amendment of Listening Devices Act 1984	1
	(Section 3)	2
[1]	Section 3 Definitions	3
	Insert in alphabetical order in section 3 (1):	4
	<i>Ombudsman</i> means the Ombudsman holding office under the <i>Ombudsman Act 1974</i> .	5
	<i>Presiding Officer</i> , in relation to a House of Parliament, means the President of the Legislative Council or the Speaker of the Legislative Assembly.	6
[2]	Section 5 Prohibition on use of listening devices	10
	Insert “and the Ombudsman” after “Attorney General” in section 5 (4) (b).	11
[3]	Section 19 Reports	12
	Omit “and to the Attorney General” from section 19 (1) and (4).	13
	Insert instead “, the Attorney General and the Ombudsman”.	14
[4]	Part 4A	15
	Insert after Part 4:	16
	Part 4A Functions of the Ombudsman	17
	21A Monitoring of operation of Act	18
	The Ombudsman may, on the basis of reports provided to the Ombudsman under this Act, monitor the use and retrieval of listening devices, and the use made of any evidence or information obtained by the use of listening devices, under this Act.	19
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21B	Reports by Ombudsman	1
(1)	The Ombudsman may at any time prepare a report on any findings of the Ombudsman arising from the exercise of his or her functions under section 21A.	2 3 4
(2)	The Ombudsman may identify, and include recommendations in the report about, amendments that might appropriately be made to this Act.	5 6 7
(3)	The Ombudsman may furnish the report to the Attorney General or to the Presiding Officer of each House of Parliament (or to both the Attorney General and to the Presiding Officer of each House).	8 9 10 11
(4)	The Ombudsman may include in the report a recommendation that the report be made public as soon as practicable.	12 13
21C	Ancillary matters concerning reports	14
(1)	A report prepared under this Part must not include any information that, if made public, could reasonably be expected:	15 16
(a)	to endanger the health or safety of any person, or	17
(b)	to disclose the methodology used in any investigation that is being, or has been or is proposed to be conducted by a person into the commission or suspected commission of an offence, or	18 19 20 21
(c)	to prejudice any investigation that is being or is proposed to be conducted by a person into the commission or suspected commission of an offence, or	22 23 24
(d)	to prejudice any legal proceedings arising from any such investigation.	25 26
(2)	Section 31AA of the <i>Ombudsman Act 1974</i> applies to a report prepared under this Part in the same way as it applies to an annual report prepared under section 30 of that Act.	27 28 29

[5] Schedule 1 Savings and transitional provisions	1
Insert at the end of the Schedule:	2
9 Application of amendments made by Communications Interception Legislation Amendment (Ombudsman Oversight) Act 2002	3
	4
	5
(1) In this clause:	6
<i>the amending Act</i> means the <i>Communications Interception Legislation Amendment (Ombudsman Oversight) Act 2002</i> .	7
	8
(2) Schedule 1 [2] to the amending Act applies only to the use of a listening device after the commencement of that Schedule.	9
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(3) Schedule 1 [3] to the amending Act applies only to a warrant granted, or an order made, after the commencement of that Schedule.	11
	12
	13

Schedule 2	Amendment of Telecommunications (Interception) (New South Wales) Act 1987	1
		2
	(Section 4)	3
[1]	Section 11 Reports	4
	Insert after section 11 (3):	5
	(4) The Ombudsman may furnish a report under subsection (1) or (2) to the Presiding Officer of each House of Parliament.	6 7
	(5) The Ombudsman may include in the report a recommendation that the report be made public as soon as practicable.	8 9
	(6) In this section:	10
	<i>Presiding Officer</i> , in relation to a House of Parliament, means the President of the Legislative Council or the Speaker of the Legislative Assembly.	11 12 13
[2]	Section 12A	14
	Insert after section 12:	15
	12A Ancillary matters concerning reports	16
	(1) A report prepared under this Part must not include any information that, if made public, could reasonably be expected:	17 18
	(a) to endanger the health or safety of any person, or	19
	(b) to disclose the methodology used in any investigation that is being, or has been or is proposed to be conducted by an eligible authority, or	20 21 22
	(c) to prejudice any investigation that is being or is proposed to be conducted by an eligible authority, or	23 24
	(d) to prejudice any legal proceedings arising from any such investigation.	25 26

Communications Interception Legislation Amendment (Ombudsman Oversight) Bill 2002

Amendment of Telecommunications (Interception) (New South Wales) Act 1987

Schedule 2

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- (2) Section 31AA of the *Ombudsman Act 1974* applies to a report prepared under this Part in the same way as it applies to an annual report prepared under section 30 of that Act. 1
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