

# TELECOMMUNICATIONS (INTERCEPTION) (NEW SOUTH WALES) ACT 1987 No. 290

NEW SOUTH WALES



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**TELECOMMUNICATIONS (INTERCEPTION) (NEW SOUTH  
WALES) ACT 1987 No. 290**

**NEW SOUTH WALES**



**Act No. 290, 1987**

An Act to enable certain State authorities to be declared to be agencies for the purposes of the Telecommunications (Interception) Act 1979 of the Commonwealth. [Assented to 16 December 1987]

**The Legislature of New South Wales enacts:****PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Telecommunications (Interception) (New South Wales) Act 1987.

**Commencement**

2. This Act shall commence on a day to be appointed by proclamation.

**Definitions**

3. (1) In this Act—

“agency” means—

- (a) the Australian Federal Police;
- (b) the National Crime Authority;
- (c) the Police Force;
- (d) the Commission; or
- (e) the Police Force of another State or a Territory of the Commonwealth in relation to which a declaration under section 34 of the Commonwealth Act is in force;

“certifying officer”, in relation to an eligible authority, means—

- (a) in the case of the Police Force—the Commissioner of Police or a Deputy Commissioner of Police; or
- (b) in the case of the Commission—a member of the Commission;

“chief officer”, in relation to an eligible authority, means—

- (a) in the case of the Police Force—the Commissioner of Police; or
- (b) in the case of the Commission—the Chairperson of the Commission;

“Commission” means the State Drug Crime Commission of New South Wales;

“communication” includes conversation, message and signal, and any part of a conversation, message or signal;

“eligible authority” means—

- (a) the Police Force; or
- (b) the Commission;

“inspecting officer” means—

- (a) the Ombudsman;
- (b) the Deputy Ombudsman holding office under the Ombudsman Act 1974;



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- (c) an Assistant Ombudsman holding office under the Ombudsman Act 1974; or
  - (d) a special officer or officer of the Ombudsman, other than a member of the Police Force;
- “in the possession of”, in relation to a document, record or copy, includes in the custody of or under the control of;
- “officer”, in relation to an eligible authority, means—
- (a) in the case of the Police Force—an officer of the Police Force; or
  - (b) in the case of the Commission—a member of the Commission or a member of the staff of the Commission;
- “Ombudsman” means the Ombudsman holding office under the Ombudsman Act 1974;
- “Part VI warrant” means a warrant issued or to be issued under Part VI of the Commonwealth Act;
- “permitted purpose”, in relation to an eligible authority, means—
- (a) in any case—
    - (i) an investigation by the authority of a prescribed offence within the meaning of the Commonwealth Act;
    - (ii) the making by an authority, body or person of a decision whether or not to begin a relevant proceeding in relation to the authority;
    - (iii) a relevant proceeding in relation to the authority;
    - (iv) the exercise by the chief officer of the authority of the powers conferred by section 68 of the Commonwealth Act;
    - (v) an inspection of the authority’s records that is made under section 10; or
    - (vi) a report on such an inspection; or
  - (b) in the case of the Police Force—
    - (i) an investigation of, or an inquiry into, alleged misbehaviour, or alleged improper conduct, of an officer of the State of New South Wales, being an investigation or inquiry under a law of this State or by a person in the person’s capacity as an officer of this State;
    - (ii) a report on such an investigation or inquiry;
    - (iii) the tendering to the Governor of advice to terminate, because of misbehaviour or improper conduct, the appointment of an officer of this State; or
    - (iv) deliberations of the Executive Council in connection with advice to the Governor to terminate, because of misbehaviour or improper conduct, the appointment of an officer of this State;

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“premises” includes—

- (a) any land;
- (b) any structure, building, aircraft, vehicle, vessel or place (whether built on or not); and
- (c) any part of such a structure, building, aircraft, vehicle, vessel or place;

“record” means—

- (a) in relation to information—a record or copy, whether in writing or otherwise, of the whole or a part of the information;
- (b) in relation to an interception, whether or not in contravention of section 7 (1) of the Commonwealth Act, of a communication—
  - (i) a record or copy, whether in writing or otherwise, of the whole or a part of the communication, being a record or copy made by means of the interception; or
  - (ii) a record or copy, whether in writing or otherwise, of the whole or a part of a record or copy that is, by virtue of any other application or applications of this definition, a record obtained by the interception; or
- (c) in relation to a warrant under section 11 or 11A of the Commonwealth Act or Part IV of that Act—
  - (i) the whole or a part of a copy of a telegram made under the warrant; or
  - (ii) a record or copy, whether in writing or otherwise, of the whole or a part of a record or copy that is, by virtue of any other application or applications of this definition, a record obtained by virtue of the warrant;

“restricted record” means—

- (a) a record obtained by an interception, whether or not in contravention of section 7 (1) of the Commonwealth Act, of a communication passing over a telecommunications system; or
- (b) a record obtained by virtue of a warrant under section 11 or 11A of the Commonwealth Act or Part IV of that Act;

“the Commonwealth Act” means the Telecommunications (Interception) Act 1979 of the Commonwealth;

“the Police Force” means the New South Wales Police Force;

“warrant” means a warrant issued under the Commonwealth Act.

(2) Expressions used in this Act which are not elsewhere defined in this section, have the same meanings as in the Commonwealth Act.

(3) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and



- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **PART 2—FUNCTIONS OF ELIGIBLE AUTHORITIES**

### **Eligible authority to keep documents connected with issue of warrants**

**4.** The chief officer of an eligible authority shall cause to be kept in the authority's records—

- (a) a copy of each warrant issued to the authority, certified in writing by a certifying officer of the authority to be a true copy of the warrant;
- (b) a copy of each notification under section 53 (1) (b) of the Commonwealth Act of the issue of such a warrant;
- (c) a copy of each instrument revoking such a warrant, certified in writing by a certifying officer of the authority to be a true copy of the instrument;
- (d) a copy of each certificate issued under section 61 (4) of the Commonwealth Act by a certifying officer of the authority; and
- (e) a copy of each authorisation by the chief officer under section 66 (2) of the Commonwealth Act.

### **Other records to be kept by an eligible authority in connection with interceptions**

**5. (1)** The chief officer of an eligible authority shall cause—

- (a) particulars of each telephone application for a Part VI warrant made by the authority;
- (b) in relation to each application by the authority for a Part VI warrant, a statement as to whether—
  - (i) the application was withdrawn or refused; or
  - (ii) a warrant was issued on the application;
- (c) in relation to each restricted record that has at any time been in the possession of the authority, particulars of—
  - (i) if the restricted record is a record obtained by an interception under a warrant issued to the authority—that warrant;
  - (ii) each occasion when the restricted record came (whether by its making or otherwise) to be in the possession of the authority;
  - (iii) each occasion (if any) when the restricted record ceased (whether by its destruction or otherwise) to be in the possession of the authority; and
  - (iv) each agency or other body (if any) from or to which, or other person (if any) from or to whom, the authority received or supplied the restricted record;

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- (d) particulars of each use made by the authority of lawfully obtained information;
- (e) particulars of each communication of lawfully obtained information by an officer of the authority to a person or body other than such an officer; and
- (f) particulars of each occasion when, to the knowledge of an officer of the authority, lawfully obtained information was given in evidence in a relevant proceeding in relation to the authority,

to be recorded in writing as soon as practicable after the happening of the events to which the particulars relate or the statement relates, as the case may be.

(2) The chief officer of an eligible authority shall cause to be kept in the authority's records each record that the chief officer has caused to be made under this section.

**Documents to be given by an eligible authority to the Minister**

6. The chief officer of an eligible authority shall give to the Minister—
- (a) a copy of each warrant issued to the authority, and of each instrument under section 52 or 57 of the Commonwealth Act revoking such a warrant, as soon as practicable after the issue or revocation of the warrant;
  - (b) within 3 months after a warrant issued to the authority ceases to be in force, a written report about—
    - (i) the use made by the authority of information obtained by interceptions under the warrant; and
    - (ii) the communication of that information to persons other than officers of the authority; and
  - (c) as soon as practicable, and in any event within 2 months, after each 30 June, a written report that sets out such information as—
    - (i) Division 2 of Part IX of the Commonwealth Act requires to be set out in the Minister's report under that Division relating to the year ending on that 30 June; and
    - (ii) can be derived from the authority's records.

**Documents to be given by State Minister to Commonwealth Minister**

7. The Minister shall give to the Minister administering the Commonwealth Act, as soon as practicable after—

- (a) a copy of a warrant issued to an eligible authority;
- (b) a copy of an instrument revoking such a warrant; or
- (c) a report of a kind referred to in section 6 (b) or (c),

is given to the Minister, a copy of the warrant, instrument or report, as the case may be.



**Keeping and destruction of restricted records**

8. (1) The chief officer of an eligible authority shall cause a restricted record (whether made before or after the commencement of section 35 of the Commonwealth Act) that is in the possession of the authority to be kept, except when it is being otherwise dealt with in accordance with the Commonwealth Act and this Act, in a secure place where it is not accessible to persons other than persons who are entitled so to deal with it.

(2) The chief officer of an eligible authority shall cause a restricted record of a kind referred to in subsection (1) to be destroyed forthwith where the chief officer is satisfied that the restricted record is not likely to be required for a permitted purpose in relation to the authority, other than a purpose connected with an inspection of the kind referred to in section 11 or with a report on such an inspection.

**PART 3—FUNCTIONS OF THE OMBUDSMAN****Functions—generally**

9. The Ombudsman may—

- (a) inspect an eligible authority's records in order to ascertain the extent of compliance by the authority's officers with Part 2;
- (b) report to the Minister about the results of those inspections; and
- (c) do anything incidental or conducive to the performance of any of the preceding functions.

**Regular inspections of an eligible authority's records**

10. (1) The Ombudsman shall inspect the records of each eligible authority—

- (a) at least once during the period beginning at the commencement of this Act and ending on 30 June 1988; and
- (b) at least twice during each financial year beginning on or after 1 July 1988,

in order to ascertain the extent to which the authority's officers have complied with Part 2 since that commencement, or since the last inspection under this Part of the authority's records, as the case requires.

(2) The Ombudsman may at any time inspect an authority's records in order to ascertain the extent to which the authority's officers have complied during any period with Part 2.

**Reports**

11. (1) The Ombudsman shall, as soon as practicable, and in any event within 3 months, after the end of each financial year, report to the Minister in writing, in relation to each eligible authority, about the results of the inspections under section 10 (1), during that financial year, of the authority's records.

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(2) The Ombudsman may report to the Minister in writing at any time about the results of an inspection under this Part and shall do so if so requested by the Minister.

(3) The Ombudsman shall give a copy of a report under subsection (1) or (2) to the chief officer of the eligible authority to which the report relates.

**Ombudsman may report on breaches**

12. Where, as a result of an inspection under this Part of the records of an eligible authority, the Ombudsman is of the opinion that an officer of the authority has contravened—

- (a) a provision of the Commonwealth Act; or
- (b) a requirement referred to in section 6 (a) or (b),

the Ombudsman may include in his or her report on the inspection a report on the contravention.

**Ombudsman's general powers**

13. (1) For the purposes of an inspection under this Part of an eligible authority's records, the Ombudsman—

- (a) may, after notifying the chief officer of the authority, enter at any reasonable time premises occupied by the authority;
- (b) is entitled to have full and free access at all reasonable times to all records of the authority;
- (c) notwithstanding any other law, is entitled to make copies of, and to take extracts from, records of the authority; and
- (d) may require an officer of the authority to give the Ombudsman such information as the Ombudsman considers necessary, being information that is in the officer's possession, or to which the officer has access, and that is relevant to the inspection.

(2) The chief officer of an eligible authority shall ensure that the authority's officers provide to the Ombudsman such assistance in connection with the exercise of the Ombudsman's functions under this Part as the Ombudsman reasonably requires.

**Power to obtain relevant information**

14. (1) Where the Ombudsman has reason to believe that an officer of an eligible authority is able to give information relevant to an inspection under this Part of the authority's records, subsections (2) and (3) have effect.

(2) The Ombudsman may, by writing given to the officer, require the officer to give the information to the Ombudsman—

- (a) by writing signed by the officer; and
- (b) at a specified place and within a specified period.



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(3) The Ombudsman may, by writing given to the officer, require the officer to attend—

- (a) before a specified inspecting officer;
- (b) at a specified place; and
- (c) within a specified period or at a specified time on a specified day,

in order to answer questions relevant to the inspection.

(4) Where the Ombudsman—

- (a) has reason to believe that an officer of an eligible authority is able to give information relevant to an inspection under this Part of the authority's records; and
- (b) does not know the officer's identity,

the Ombudsman may, by writing given to the chief officer of the authority, require the chief officer, or a person nominated by the chief officer, to attend—

- (c) before a specified inspecting officer;
- (d) at a specified place; and
- (e) within a specified period or at a specified time on a specified day,

in order to answer questions relevant to the inspection.

(5) The place, and the period or the time and day, specified in a requirement under this section shall be reasonable having regard to the circumstances in which the requirement is made.

**Ombudsman to be given information and access notwithstanding other laws**

15. (1) Notwithstanding any other law, a person is not excused from giving information, answering a question, or giving access to a document, as and when required by or under this Part, on the ground that giving the information, answering the question, or giving access to the document, as the case may be, would contravene a law, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty, but—

- (a) the information, the answer, or the fact that the person has so given access to the document, as the case may be; and
- (b) any information or thing (including a document) obtained as a direct or indirect consequence of giving the firstmentioned information, answering the question or giving access to the firstmentioned document, as the case may be,

is not admissible in evidence against the person except in a proceeding by way of a prosecution for an offence against section 22.

(2) Nothing in any other law prevents an officer of an eligible authority from—

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- (a) giving information to an inspecting officer (whether orally or in writing and whether or not in answer to a question); or
- (b) giving to an inspecting officer access to a record of the authority,

for the purposes of an inspection under this Part of the authority's records.

(3) Nothing in any other law prevents an officer of an eligible authority from making a record of information, or causing a record of information to be made, for the purposes of giving the information to a person as permitted by subsection (2).

**Dealing with information for the purposes of inspection and report**

**16. Where—**

- (a) information is given or communicated to an inspecting officer, as permitted by section 15 (2) or this section, for the purposes of an inspection, or of a report on an inspection, under this Part of an eligible authority's records; or
- (b) an inspecting officer obtains information as a result of being given access to records of an eligible authority, as permitted by section 15 (2), for the purposes of an inspection under this Part of the authority's records,

the inspecting officer may, notwithstanding any other law, communicate to another inspecting officer, make use of, or make a record of, the information for the purposes of an inspection, or of a report on an inspection, under this Part of the authority's records.

**Ombudsman not to be sued**

17. Subject to the provisions applying by virtue of section 19, an inspecting officer, or a person acting under an inspecting officer's direction or authority, is not liable to an action, suit or proceeding for or in relation to an act done, or omitted to be done, in good faith in the exercise, or the purported exercise, of a function conferred by this Part.

**Delegation by Ombudsman**

18. The Ombudsman may delegate to another inspecting officer any of the Ombudsman's functions, other than—

- (a) this power of delegation; and
- (b) a power to report to the Minister.

**Application of the Ombudsman Act 1974**

19. (1) Section 35B of the Ombudsman Act 1974 does not apply in relation to the exercise or proposed exercise of a function of an inspecting officer under this Part.

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(2) Anything that an inspecting officer has done or omitted to do under this Part shall not be included in a report or special report under section 30 or 31 of the Ombudsman Act 1974.

(3) Subject to section 15 of this Act, section 34 of the Ombudsman Act 1974 applies to information obtained as an inspecting officer and so applies as if—

- (a) a reference in section 34 to information did not include a reference to lawfully obtained information; and
- (b) paragraphs (a) and (b) (i) of section 34 (1) were omitted.

#### **PART 4—MISCELLANEOUS**

##### **Copies of reports for Commonwealth Minister**

20. The Minister shall give the Minister administering the Commonwealth Act, as soon as practicable after a report on an inspection of the kind referred to in section 11 is given to the Minister, a copy of the report.

##### **Disclosure by persons under the Minister's administration**

21. A person, other than an inspecting officer, engaged in the administration of this Act shall not disclose any information or record obtained by the person in the administration of this Act, unless the disclosure is made—

- (a) in accordance with the Commonwealth Act;
- (b) for the purpose of any proceedings under—
  - (i) section 37 of the Ombudsman Act 1974;
  - (ii) Part III of the Royal Commissions Act 1923; or
  - (iii) Part IV of the Special Commissions of Inquiry Act 1983; or
- (c) for the purpose of discharging the person's functions under this or any other Act.

Penalty: 10 penalty units.

##### **Offences relating to inspections under Part 3**

22. (1) A person shall not, without reasonable excuse, refuse or fail—

- (a) to attend before a person;
- (b) to furnish information; or
- (c) to answer a question,

when required under section 14 to do so.

(2) A person shall not—



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- (a) without reasonable excuse, wilfully obstruct, hinder or resist a person in connection with the exercise of the Ombudsman's functions under Part 3; or
- (b) give to an inspecting officer, in connection with an inspection under Part 3, information or a statement that the firstmentioned person knows to be false or misleading in a material particular.

Penalty: 10 penalty units or imprisonment for 6 months.

**Proceedings for offences**

23. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

24. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.







## TELECOMMUNICATIONS (INTERCEPTION) (NEW SOUTH WALES) BILL 1987

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to enact provisions, in accordance with specific requirements contained in the Telecommunications (Interception) Act 1979 of the Commonwealth, so as to enable 2 New South Wales law enforcement agencies, namely, the New South Wales Police Force and the State Drug Crime Commission of New South Wales, to be declared to be agencies for the purposes of the Commonwealth Act. An agency in respect of which such a declaration has been made may apply, under and in accordance with the Commonwealth Act, for the issue of warrants authorising the interception of telecommunications.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day.

Clause 3 contains definitions for the purposes of the proposed Act. Most of the definitions simply repeat, for the purpose of the intelligibility of the proposed Act, the terms of definitions contained in the Commonwealth Act. "Eligible authority" means the New South Wales Police Force and the State Drug Crime Commission of New South Wales.

### PART 2—FUNCTIONS OF ELIGIBLE AUTHORITIES

Clause 4 implements sections 35 (1) (a) and 80 (2) of the Commonwealth Act. The clause requires the chief officer of an eligible authority (the Commissioner of Police in the case of the Police Force and the Chairperson of the State Drug Crime Commission of New South Wales in the case of the Commission) to cause to be kept in the authority's records documents connected with the issue and revocation of warrants.

Clause 5 implements sections 35 (1) (a) and 81 (2) and (3) of the Commonwealth Act. The clause requires the chief officer of an eligible authority to cause written records to be made relating to interceptions, the use made of intercepted information and the communication of intercepted information.

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Clause 6 implements section 35 (1) (b), (c) and (d) of the Commonwealth Act. The clause requires the chief officer of an eligible authority to give to the Minister administering the proposed Act—

- (a) copies of all warrants and instruments of revocation;
- (b) a report, within 3 months after a warrant ceases to be in force, on the use made of intercepted information and the communication of that information; and
- (c) a report, within 2 months after each 30 June, setting out such information as is required to be set out in the Commonwealth Minister's annual report under Division 2 of Part IX of the Commonwealth Act.

Clause 7 implements section 35 (1) (e) of the Commonwealth Act. The clause requires the State Minister to give the Commonwealth Minister copies of all warrants and instruments of revocation and copies of reports received under clause 6.

Clause 8 implements section 35 (1) (f) and (g) of the Commonwealth Act. The clause requires the chief officer of an eligible authority to keep restricted records (that is, records obtained from interceptions or by virtue of a warrant) in a secure place and specifies the circumstances in which restricted records are to be destroyed.

### PART 3—FUNCTIONS OF THE OMBUDSMAN

Section 35 (1) (h) of the Commonwealth Act prevents the Commonwealth Minister from making a declaration that a State authority is an eligible authority under the Commonwealth Act unless the Commonwealth Minister is satisfied that the law of the State makes satisfactory provision requiring regular inspections of the eligible authority's records for the purpose of ascertaining the extent of compliance by the officers of the eligible authority with the requirements referred to in section 35 (1) (a), (f) and (g) of the Commonwealth Act (that is, the requirements implemented by clauses 4, 5 and 8). The inspections are required to be made by an authority of the State that is independent of the eligible authority and on which sufficient powers have been conferred to enable the independent authority to make a proper inspection of those records for that purpose.

Under the proposed Act, the independent authority of the State is the New South Wales Ombudsman.

The proposed Part contains clauses 9–19 which make the same provisions in relation to the State Ombudsman as are made in sections 82–92 of the Commonwealth Act in relation to the Commonwealth Ombudsman.

Clause 9 (section 82 of the Commonwealth Act) enables the Ombudsman to inspect an eligible authority's records in order to ascertain the extent of compliance by the authority with Part 2 of the proposed Act and to report to the Minister about the results of those inspections.

Clause 10 (section 83 of the Commonwealth Act) requires the Ombudsman to conduct regular inspections.

Clause 11 (section 84 of the Commonwealth Act) requires the Ombudsman to report annually to the Minister about the results of inspections under clause 10 and enables the making of more frequent reports on the initiative of the Ombudsman or the Minister.

Clause 12 (section 85 of the Commonwealth Act) enables the Ombudsman to report on breaches of the Commonwealth Act or clause 6 (a) or (b) of the proposed Act by an officer of an eligible authority.

Clause 13 (section 86 of the Commonwealth Act) confers general powers on the Ombudsman for the purpose of carrying out inspections of an eligible authority's records.



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Clause 14 (section 87 of the Commonwealth Act) confers powers on the Ombudsman for the purpose of obtaining information relevant to an inspection from an officer of an eligible authority.

Clause 15 (section 88 of the Commonwealth Act) removes restrictions that might otherwise apply to the giving of information by a person to the Ombudsman.

Clause 16 (section 89 of the Commonwealth Act) removes restrictions that might otherwise apply to the communication between the Ombudsman and the Ombudsman's officers of information obtained by them as a consequence of an inspection.

Clause 17 (section 90 of the Commonwealth Act) confers an immunity from legal proceedings on persons acting in good faith in the exercise of functions conferred under Part 3 of the proposed Act.

Clause 18 (section 91 of the Commonwealth Act) enables the delegation of certain of the Ombudsman's functions under Part 3 of the proposed Act.

Clause 19 (section 92 of the Commonwealth Act) deals with the application of the provisions of the Ombudsman Act 1974. Subclause (1) excludes the power of the Ombudsman to apply to the Supreme Court for a determination of the Ombudsman's jurisdiction under the proposed Act. Subclause (2) ensures that the reporting requirements under the proposed Act are kept separate from those under the Ombudsman Act 1974. Subclause (3) applies appropriate elements of the secrecy obligations imposed on the Ombudsman and the Ombudsman's officers.

#### PART 4—MISCELLANEOUS

Clause 20 implements section 35 (1) (m) of the Commonwealth Act. The clause requires the State Minister to give the Commonwealth Minister copies of reports of inspections of the kind referred to in clause 11.

Clause 21 imposes secrecy obligations on persons, other than the Ombudsman and the Ombudsman's officers, in relation to information obtained by them in the administration of the proposed Act.

Clause 22 creates offences for improperly refusing to assist in or obstructing inspections under Part 3 of the proposed Act or for wilfully giving false or misleading information.

Clause 23 enables proceedings for offences to be dealt with summarily before a Local Court.

Clause 24 enables the making of regulations for the purposes of the proposed Act.

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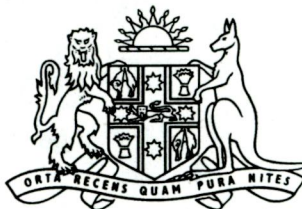
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# **TELECOMMUNICATIONS (INTERCEPTION) (NEW SOUTH WALES) BILL 1987**

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No. , 1987

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## **A BILL FOR**

An Act to enable certain State authorities to be declared to be agencies for the purposes of the Telecommunications (Interception) Act 1979 of the Commonwealth.

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*Telecommunications (Interception) (New South Wales) 1987*

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**The Legislature of New South Wales enacts:**

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Telecommunications (Interception) (New South Wales) Act 1987.

**Commencement**

2. This Act shall commence on a day to be appointed by proclamation.

**Definitions**

3. (1) In this Act—

10 “agency” means—

- (a) the Australian Federal Police;
- (b) the National Crime Authority;
- (c) the Police Force;
- (d) the Commission; or

15 (e) the Police Force of another State or a Territory of the Commonwealth in relation to which a declaration under section 34 of the Commonwealth Act is in force;

“certifying officer”, in relation to an eligible authority, means—

20 (a) in the case of the Police Force—the Commissioner of Police or a Deputy Commissioner of Police; or

(b) in the case of the Commission—a member of the Commission;

“chief officer”, in relation to an eligible authority, means—

25 (a) in the case of the Police Force—the Commissioner of Police; or  
(b) in the case of the Commission—the Chairperson of the Commission;

“Commission” means the State Drug Crime Commission of New South Wales;

“communication” includes conversation, message and signal, and any part of a conversation, message or signal;

30 “eligible authority” means—

- (a) the Police Force; or
- (b) the Commission;

“inspecting officer” means—

35 (a) the Ombudsman;  
(b) the Deputy Ombudsman holding office under the Ombudsman Act 1974;

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- (c) an Assistant Ombudsman holding office under the Ombudsman Act 1974; or
- (d) a special officer or officer of the Ombudsman, other than a member of the Police Force;
- 5 "in the possession of", in relation to a document, record or copy, includes in the custody of or under the control of;
- "officer", in relation to an eligible authority, means—
  - (a) in the case of the Police Force—an officer of the Police Force; or
  - (b) in the case of the Commission—a member of the Commission or
  - 10 a member of the staff of the Commission;
- "Ombudsman" means the Ombudsman holding office under the Ombudsman Act 1974;
- "Part VI warrant" means a warrant issued or to be issued under Part VI of the Commonwealth Act;
- 15 "permitted purpose", in relation to an eligible authority, means—
  - (a) in any case—
    - (i) an investigation by the authority of a prescribed offence within the meaning of the Commonwealth Act;
    - (ii) the making by an authority, body or person of a decision
    - 20 whether or not to begin a relevant proceeding in relation to the authority;
    - (iii) a relevant proceeding in relation to the authority;
    - (iv) the exercise by the chief officer of the authority of the powers conferred by section 68 of the Commonwealth Act;
    - 25 (v) an inspection of the authority's records that is made under section 10; or
    - (vi) a report on such an inspection; or
  - (b) in the case of the Police Force—
    - (i) an investigation of, or an inquiry into, alleged misbehaviour,
    - 30 or alleged improper conduct, of an officer of the State of New South Wales, being an investigation or inquiry under a law of this State or by a person in the person's capacity as an officer of this State;
    - (ii) a report on such an investigation or inquiry;
    - 35 (iii) the tendering to the Governor of advice to terminate, because of misbehaviour or improper conduct, the appointment of an officer of this State; or
    - (iv) deliberations of the Executive Council in connection with
    - 40 advice to the Governor to terminate, because of misbehaviour or improper conduct, the appointment of an officer of this State;



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“premises” includes—

- (a) any land;
- (b) any structure, building, aircraft, vehicle, vessel or place (whether built on or not); and
- 5 (c) any part of such a structure, building, aircraft, vehicle, vessel or place;

“record” means—

- (a) in relation to information—a record or copy, whether in writing or otherwise, of the whole or a part of the information;
- 10 (b) in relation to an interception, whether or not in contravention of section 7 (1) of the Commonwealth Act, of a communication—
  - (i) a record or copy, whether in writing or otherwise, of the whole or a part of the communication, being a record or copy made by means of the interception; or
  - 15 (ii) a record or copy, whether in writing or otherwise, of the whole or a part of a record or copy that is, by virtue of any other application or applications of this definition, a record obtained by the interception; or
- 20 (c) in relation to a warrant under section 11 or 11A of the Commonwealth Act or Part IV of that Act—
  - (i) the whole or a part of a copy of a telegram made under the warrant; or
  - (ii) a record or copy, whether in writing or otherwise, of the whole or a part of a record or copy that is, by virtue of any other application or applications of this definition, a record
- 25 obtained by virtue of the warrant;

“restricted record” means—

- (a) a record obtained by an interception, whether or not in contravention of section 7 (1) of the Commonwealth Act, of a communication passing over a telecommunications system; or
- 30 (b) a record obtained by virtue of a warrant under section 11 or 11A of the Commonwealth Act or Part IV of that Act;

“the Commonwealth Act” means the Telecommunications (Interception) Act 1979 of the Commonwealth;

35 “the Police Force” means the New South Wales Police Force;

“warrant” means a warrant issued under the Commonwealth Act.

(2) Expressions used in this Act which are not elsewhere defined in this section, have the same meanings as in the Commonwealth Act.

(3) In this Act—

- 40 (a) a reference to a function includes a reference to a power, authority and duty; and

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **PART 2—FUNCTIONS OF ELIGIBLE AUTHORITIES**

### **Eligible authority to keep documents connected with issue of warrants**

- 5     **4.** The chief officer of an eligible authority shall cause to be kept in the authority's records—
- (a) a copy of each warrant issued to the authority, certified in writing by a certifying officer of the authority to be a true copy of the warrant;
  - 10    (b) a copy of each notification under section 53 (1) (b) of the Commonwealth Act of the issue of such a warrant;
  - (c) a copy of each instrument revoking such a warrant, certified in writing by a certifying officer of the authority to be a true copy of the instrument;
  - 15    (d) a copy of each certificate issued under section 61 (4) of the Commonwealth Act by a certifying officer of the authority; and
  - (e) a copy of each authorisation by the chief officer under section 66 (2) of the Commonwealth Act.

### **Other records to be kept by an eligible authority in connection with** 20 **interceptions**

- 5     **5. (1)** The chief officer of an eligible authority shall cause—
- (a) particulars of each telephone application for a Part VI warrant made by the authority;
  - 25    (b) in relation to each application by the authority for a Part VI warrant, a statement as to whether—
    - (i) the application was withdrawn or refused; or
    - (ii) a warrant was issued on the application;
  - (c) in relation to each restricted record that has at any time been in the possession of the authority, particulars of—
    - 30    (i) if the restricted record is a record obtained by an interception under a warrant issued to the authority—that warrant;
    - (ii) each occasion when the restricted record came (whether by its making or otherwise) to be in the possession of the authority;
    - 35    (iii) each occasion (if any) when the restricted record ceased (whether by its destruction or otherwise) to be in the possession of the authority; and
    - (iv) each agency or other body (if any) from or to which, or other person (if any) from or to whom, the authority received or supplied the restricted record;

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- (d) particulars of each use made by the authority of lawfully obtained information;
- (e) particulars of each communication of lawfully obtained information by an officer of the authority to a person or body other than such an officer; and
- (f) particulars of each occasion when, to the knowledge of an officer of the authority, lawfully obtained information was given in evidence in a relevant proceeding in relation to the authority,

to be recorded in writing as soon as practicable after the happening of the events to which the particulars relate or the statement relates, as the case may be.

(2) The chief officer of an eligible authority shall cause to be kept in the authority's records each record that the chief officer has caused to be made under this section.

**15 Documents to be given by an eligible authority to the Minister**

6. The chief officer of an eligible authority shall give to the Minister—

- (a) a copy of each warrant issued to the authority, and of each instrument under section 52 or 57 of the Commonwealth Act revoking such a warrant, as soon as practicable after the issue or revocation of the warrant;
- (b) within 3 months after a warrant issued to the authority ceases to be in force, a written report about—
  - (i) the use made by the authority of information obtained by interceptions under the warrant; and
  - (ii) the communication of that information to persons other than officers of the authority; and
- (c) as soon as practicable, and in any event within 2 months, after each 30 June, a written report that sets out such information as—
  - (i) Division 2 of Part IX of the Commonwealth Act requires to be set out in the Minister's report under that Division relating to the year ending on that 30 June; and
  - (ii) can be derived from the authority's records.

**Documents to be given by State Minister to Commonwealth Minister**

7. The Minister shall give to the Minister administering the Commonwealth Act, as soon as practicable after—

- (a) a copy of a warrant issued to an eligible authority;
- (b) a copy of an instrument revoking such a warrant; or
- (c) a report of a kind referred to in section 6 (b) or (c),

is given to the Minister, a copy of the warrant, instrument or report, as the case may be.



**Keeping and destruction of restricted records**

8. (1) The chief officer of an eligible authority shall cause a restricted record (whether made before or after the commencement of section 35 of the Commonwealth Act) that is in the possession of the authority to be kept, 5 except when it is being otherwise dealt with in accordance with the Commonwealth Act and this Act, in a secure place where it is not accessible to persons other than persons who are entitled so to deal with it.

(2) The chief officer of an eligible authority shall cause a restricted record of a kind referred to in subsection (1) to be destroyed forthwith where the 10 chief officer is satisfied that the restricted record is not likely to be required for a permitted purpose in relation to the authority, other than a purpose connected with an inspection of the kind referred to in section 11 or with a report on such an inspection.

**PART 3—FUNCTIONS OF THE OMBUDSMAN****15 Functions—generally**

9. The Ombudsman may—

- (a) inspect an eligible authority's records in order to ascertain the extent of compliance by the authority's officers with Part 2;
- (b) report to the Minister about the results of those inspections; and
- 20 (c) do anything incidental or conducive to the performance of any of the preceding functions.

**Regular inspections of an eligible authority's records**

10. (1) The Ombudsman shall inspect the records of each eligible authority—

- 25 (a) at least once during the period beginning at the commencement of this Act and ending on 30 June 1988; and
- (b) at least twice during each financial year beginning on or after 1 July 1988,

in order to ascertain the extent to which the authority's officers have 30 complied with Part 2 since that commencement, or since the last inspection under this Part of the authority's records, as the case requires.

(2) The Ombudsman may at any time inspect an authority's records in order to ascertain the extent to which the authority's officers have complied during any period with Part 2.

**35 Reports**

11. (1) The Ombudsman shall, as soon as practicable, and in any event within 3 months, after the end of each financial year, report to the Minister in writing, in relation to each eligible authority, about the results of the inspections under section 10 (1), during that financial year, of the authority's 40 records.

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(2) The Ombudsman may report to the Minister in writing at any time about the results of an inspection under this Part and shall do so if so requested by the Minister.

(3) The Ombudsman shall give a copy of a report under subsection (1) or (2) to the chief officer of the eligible authority to which the report relates.

**Ombudsman may report on breaches**

12. Where, as a result of an inspection under this Part of the records of an eligible authority, the Ombudsman is of the opinion that an officer of the authority has contravened—

- 15 (a) a provision of the Commonwealth Act; or
- (b) a requirement referred to in section 6 (a) or (b),

the Ombudsman may include in his or her report on the inspection a report on the contravention.

**Ombudsman's general powers**

13. (1) For the purposes of an inspection under this Part of an eligible authority's records, the Ombudsman—

- (a) may, after notifying the chief officer of the authority, enter at any reasonable time premises occupied by the authority;
- 20 (b) is entitled to have full and free access at all reasonable times to all records of the authority;
- (c) notwithstanding any other law, is entitled to make copies of, and to take extracts from, records of the authority; and
- 25 (d) may require an officer of the authority to give the Ombudsman such information as the Ombudsman considers necessary, being information that is in the officer's possession, or to which the officer has access, and that is relevant to the inspection.

(2) The chief officer of an eligible authority shall ensure that the authority's officers provide to the Ombudsman such assistance in connection with the exercise of the Ombudsman's functions under this Part as the  
30 Ombudsman reasonably requires.

**Power to obtain relevant information**

14. (1) Where the Ombudsman has reason to believe that an officer of an eligible authority is able to give information relevant to an inspection under this Part of the authority's records, subsections (2) and (3) have effect.

35 (2) The Ombudsman may, by writing given to the officer, require the officer to give the information to the Ombudsman—

- (a) by writing signed by the officer; and
- (b) at a specified place and within a specified period.



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(3) The Ombudsman may, by writing given to the officer, require the officer to attend—

- (a) before a specified inspecting officer;
  - (b) at a specified place; and
  - 5 (c) within a specified period or at a specified time on a specified day,
- in order to answer questions relevant to the inspection.

(4) Where the Ombudsman—

- (a) has reason to believe that an officer of an eligible authority is able to give information relevant to an inspection under this Part of the
- 10 authority's records; and
- (b) does not know the officer's identity,

the Ombudsman may, by writing given to the chief officer of the authority, require the chief officer, or a person nominated by the chief officer, to attend—

- 15 (c) before a specified inspecting officer;
  - (d) at a specified place; and
  - (e) within a specified period or at a specified time on a specified day,
- in order to answer questions relevant to the inspection.

(5) The place, and the period or the time and day, specified in a  
20 requirement under this section shall be reasonable having regard to the circumstances in which the requirement is made.

**Ombudsman to be given information and access notwithstanding other laws**

15 (1) Notwithstanding any other law, a person is not excused from giving information, answering a question, or giving access to a document, as and when required by or under this Part, on the ground that giving the information, answering the question, or giving access to the document, as the case may be, would contravene a law, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty, but—

- 30 (a) the information, the answer, or the fact that the person has so given access to the document, as the case may be; and
- (b) any information or thing (including a document) obtained as a direct or indirect consequence of giving the firstmentioned information, answering the question or giving access to the firstmentioned
- 35 document, as the case may be,

is not admissible in evidence against the person except in a proceeding by way of a prosecution for an offence against section 22.

(2) Nothing in any other law prevents an officer of an eligible authority from—

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(a) giving information to an inspecting officer (whether orally or in writing and whether or not in answer to a question); or

(b) giving to an inspecting officer access to a record of the authority,

for the purposes of an inspection under this Part of the authority's records.

- 5 (3) Nothing in any other law prevents an officer of an eligible authority from making a record of information, or causing a record of information to be made, for the purposes of giving the information to a person as permitted by subsection (2).

**Dealing with information for the purposes of inspection and report**

10 16. Where—

(a) information is given or communicated to an inspecting officer, as permitted by section 15 (2) or this section, for the purposes of an inspection, or of a report on an inspection, under this Part of an eligible authority's records; or

15 (b) an inspecting officer obtains information as a result of being given access to records of an eligible authority, as permitted by section 15 (2), for the purposes of an inspection under this Part of the authority's records,

the inspecting officer may, notwithstanding any other law, communicate to  
20 another inspecting officer, make use of, or make a record of, the information for the purposes of an inspection, or of a report on an inspection, under this Part of the authority's records.

**Ombudsman not to be sued**

17. Subject to the provisions applying by virtue of section 19, an  
25 inspecting officer, or a person acting under an inspecting officer's direction or authority, is not liable to an action, suit or proceeding for or in relation to an act done, or omitted to be done, in good faith in the exercise, or the purported exercise, of a function conferred by this Part.

**Delegation by Ombudsman**

30 18. The Ombudsman may delegate to another inspecting officer any of the Ombudsman's functions, other than—

(a) this power of delegation; and

(b) a power to report to the Minister.

**Application of the Ombudsman Act 1974**

35 19. (1) Section 35B of the Ombudsman Act 1974 does not apply in relation to the exercise or proposed exercise of a function of an inspecting officer under this Part.



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(2) Anything that an inspecting officer has done or omitted to do under this Part shall not be included in a report or special report under section 30 or 31 of the Ombudsman Act 1974.

(3) Subject to section 15 of this Act, section 34 of the Ombudsman Act 1974 applies to information obtained as an inspecting officer and so applies as if—

- (a) a reference in section 34 to information did not include a reference to lawfully obtained information; and
- (b) paragraphs (a) and (b) (i) of section 34 (1) were omitted.

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#### **PART 4—MISCELLANEOUS**

##### **Copies of reports for Commonwealth Minister**

20. The Minister shall give the Minister administering the Commonwealth Act, as soon as practicable after a report on an inspection of the kind referred to in section 11 is given to the Minister, a copy of the report.

##### **Disclosure by persons under the Minister's administration**

21. A person, other than an inspecting officer, engaged in the administration of this Act shall not disclose any information or record obtained by the person in the administration of this Act, unless the disclosure is made—

- (a) in accordance with the Commonwealth Act;
- (b) for the purpose of any proceedings under—
  - (i) section 37 of the Ombudsman Act 1974;
  - (ii) Part III of the Royal Commissions Act 1923; or
  - 25 (iii) Part IV of the Special Commissions of Inquiry Act 1983; or
- (c) for the purpose of discharging the person's functions under this or any other Act.

Penalty: 10 penalty units.

##### **Offences relating to inspections under Part 3**

30 22. (1) A person shall not, without reasonable excuse, refuse or fail—

- (a) to attend before a person;
- (b) to furnish information; or
- (c) to answer a question,

when required under section 14 to do so.

35 (2) A person shall not—

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- (a) without reasonable excuse, wilfully obstruct, hinder or resist a person in connection with the exercise of the Ombudsman's functions under Part 3; or
- 5 (b) give to an inspecting officer, in connection with an inspection under Part 3, information or a statement that the firstmentioned person knows to be false or misleading in a material particular.

Penalty: 10 penalty units or imprisonment for 6 months.

**Proceedings for offences**

- 10 23. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

- 15 24. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

