

Passed by both Houses



New South Wales

# Telecommunications (Interception and Access) (New South Wales) Amendment Bill 2009

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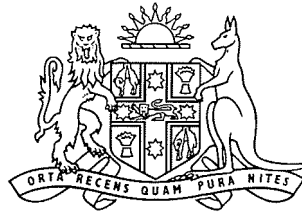
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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2009*



New South Wales

## **Telecommunications (Interception and Access) (New South Wales) Amendment Bill 2009**

Act No , 2009

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*An Act to amend the *Telecommunications (Interception and Access) (New South Wales) Act 1987* to harmonise its provisions with those of the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth; and for other purposes.*

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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

**1 Name of Act**

This Act is the *Telecommunications (Interception and Access) (New South Wales) Amendment Act 2009*.

**2 Commencement**

This Act commences on the date of assent to this Act.

**3 Amendment of Telecommunications (Interception and Access) (New South Wales) Act 1987 No 290**

The *Telecommunications (Interception and Access) (New South Wales) Act 1987* is amended as set out in Schedule 1.

**4 Repeal of Act**

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## Schedule 1 Amendments

(Section 3)

### [1] Section 3 Definitions

Omit paragraph (b) of the definition of *certifying officer* in section 3 (1).

Insert instead:

- (b) in the case of the New South Wales Crime Commission:
  - (i) a member of that Commission, or
  - (ii) a member of the staff of that Commission who is authorised to be a certifying officer of the Commission under section 5AC (5) of the Commonwealth Act, or

### [2] Section 3 (1), definition of “eligible authority”

Insert at the end of paragraph (e) of the definition:

, or

- (f) the Inspector of the Independent Commission Against Corruption, or
- (g) the Inspector of the Police Integrity Commission.

### [3] Section 3 (1), definition of “officer”

Omit “*Police Service Act 1990*” from paragraph (d).

Insert instead “*Police Integrity Commission Act 1996*”.

### [4] Section 3 (1), definition of “Part 2-5 warrant”

Omit the definition of *Part VI warrant*. Insert instead:

*Part 2-5 warrant* means a warrant issued or to be issued under Part 2-5 of the Commonwealth Act.

### [5] Section 3 (1), definition of “permitted purpose”

Omit the definition. Insert instead:

*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, or
  - (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, or

- (iii) a relevant proceeding in relation to the authority, or
  - (iv) the exercise by the chief officer of the authority of the powers conferred by section 68 of the Commonwealth Act, or
  - (v) an inspection of the authority's records that is made under section 10, or
  - (vi) a report on such an inspection, or
  - (vii) the keeping of records by the authority under sections 4 and 5, 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, or
  - (ii) a report on such an investigation or inquiry, or
  - (iii) the making by a person of a decision in relation to the appointment, re-appointment, term of appointment, retirement or termination of appointment of an officer or member of staff of the Police Force, or
  - (iv) a review (whether by way of appeal or otherwise) of such a decision, or
  - (v) the tendering to the Governor of advice to terminate, because of misbehaviour or improper conduct, the appointment of an officer of this State, or
  - (vi) 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, or
- (c) in the case of the Independent Commission Against Corruption:
- (i) an investigation under the *Independent Commission Against Corruption Act 1988* into whether corrupt conduct (within the meaning of that Act) may have occurred, may be occurring or may be about to occur, or
  - (ii) a report on such an investigation, or

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- (d) in the case of the Inspector of the Independent Commission Against Corruption:
    - (i) dealing with (by reports and recommendations) complaints of abuse of power, impropriety or other forms of misconduct (within the meaning of the *Independent Commission Against Corruption Act 1988*) on the part of the Independent Commission Against Corruption or officers of that Commission, or
    - (ii) dealing with (by reports and recommendations) conduct amounting to maladministration (within the meaning of the *Independent Commission Against Corruption Act 1988*) by the Independent Commission Against Corruption or officers of that Commission, or
  - (e) in the case of the Inspector of the Police Integrity Commission—dealing with (by reports and recommendations) complaints of abuse of power, impropriety or other forms of misconduct (within the meaning of the *Police Integrity Commission Act 1996*) on the part of the Police Integrity Commission or officers of that Commission, or
  - (f) in the case of the Police Integrity Commission:
    - (i) an investigation under the *Police Integrity Commission Act 1996* of police misconduct of an officer of the Police Force, or
    - (ii) a report on such an investigation, or
    - (iii) the tendering to the Governor of advice to terminate, because of misbehaviour or improper conduct, the appointment of the Commissioner of Police, 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 the Commissioner of Police.

**[6] Section 3A**

Insert after section 3:

**3A Information or question relevant to inspection by Ombudsman**

- (1) For the purposes of this Act, information or a question is relevant to an inspection of an eligible authority's records under Part 3 if the information or question is about:

- (a) the location of any of those records, or
- (b) the making, compilation or keeping of any of those records, or
- (c) the accuracy or completeness of any of those records, or
- (d) any matter to which any of those records relates, or
- (e) in the case where the Ombudsman suspects on reasonable grounds that an officer of the authority has contravened this Act or the Commonwealth Act—any matter relating to the suspected contravention.

- (2) Nothing in subsection (1) limits the generality of a reference in this Act to information, or to a question, that is relevant to an inspection of an eligible authority's records.

**[7] Section 4 Eligible authority to keep documents connected with issue of warrants**

Omit section 4 (a). Insert instead:

- (a) each warrant issued to the authority (or a copy of any such warrant that is certified in writing by a certifying officer of the authority to be a true copy of the warrant),

**[8] Section 4 (b)**

Omit “section 53 (1) (b)”. Insert instead “section 59A (2)”.

**[9] Section 5 Other records to be kept by an eligible authority in connection with interceptions**

Omit “Part VI” wherever occurring in section 5 (1). Insert instead “Part 2-5”.

**[10] Section 5 (1) (b1)**

Insert after section 5 (1) (b):

- (b1) in relation to each Part 2-5 warrant whose authority is exercised by the eligible authority, particulars of:
  - (i) the warrant, and
  - (ii) the day on which, and the time at which, each interception under the warrant began, and
  - (iii) the duration of each such interception, and
  - (iv) the name of the person who carried out each such interception, and
  - (v) in relation to a named person warrant—each service to or from which communications have been intercepted under the warrant,

**[11] Section 5 (1)**

Insert “or by means of a computer” after “in writing”.

**[12] Section 5 (1A)**

Insert after section 5 (1):

- (1A) If a Part 2-5 warrant is a named person warrant, the particulars referred to in subsection (1) (b1) (ii) must indicate the service in respect of which each interception occurred.

**[13] Section 6 Documents to be given by an eligible authority to the Minister**

Omit section 6 (a).

**[14] Section 6 (c)**

Omit “Part IX”. Insert instead “Part 2-8”.

**[15] Section 7**

Omit the section. Insert instead:

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

The Minister is to give the Minister administering the Commonwealth Act a report of a kind referred to in section 6 (b) or (c) as soon as practicable after the report is given to the Minister.

**[16] Section 19A**

Insert after section 19:

**19A Exchange of information between Ombudsman and Commonwealth Ombudsman**

- (1) The Ombudsman may enter into an arrangement (an *information sharing arrangement*) with the Commonwealth Ombudsman for the purpose of sharing or exchanging information held by the Ombudsman and the Commonwealth Ombudsman.
- (2) The information to which an information sharing arrangement may relate is limited to the following:
- (a) information concerning eligible authorities,
- (b) any other information relevant to the exercise of the respective functions of the Ombudsman and Commonwealth Ombudsman under this Act and the Commonwealth Act.



- (3) Under an information sharing arrangement, the Ombudsman and the Commonwealth Ombudsman are, despite any other Act or other law of the State, authorised:
  - (a) to request and receive information held by the other party to the arrangement, and
  - (b) to disclose information to the other party,  
but only to the extent that the information is reasonably necessary to assist in the exercise of functions of the Ombudsman under this Act or the functions of the Commonwealth Ombudsman under the Commonwealth Act.
- (4) This section does not limit the operation of any Act under which the Ombudsman or the Commonwealth Ombudsman is authorised or required to disclose information to another person or body.
- (5) In this section:  
*Commonwealth Ombudsman* means the Commonwealth Ombudsman appointed under the *Ombudsman Act 1976* of the Commonwealth.

**[17] Section 25 and Schedule 1**

Insert after section 24:

**25 Savings, transitional and other provisions**

Schedule 1 has effect.

**Schedule 1 Savings, transitional and other provisions**

(Section 25)

**Part 1 General**

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
*Telecommunications (Interception and Access) (New South Wales) Amendment Act 2009*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of Telecommunications (Interception and Access) (New South Wales) Amendment Act 2009**

### **2 Definition**

In this Part:

*amending Act* means the *Telecommunications (Interception and Access) (New South Wales) Amendment Act 2009*.

### **3 Application of amendments**

- (1) Section 3A (as inserted by the amending Act) extends to the inspection of the records of an eligible authority even if the records were made (or required to be made) before the commencement of the section.
- (2) Section 7 (as in force immediately before its substitution by the amending Act) continues to have effect in relation to documents given to the Minister before that substitution.