

Act No. 290

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.

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.
