



New South Wales

# Telecommunications (Interception and Access) (New South Wales) Amendment Bill 2008

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Telecommunications (Interception and Access) (New South Wales) Act 1987* (**the Principal Act**):

- (a) to harmonise the provisions of the Principal Act with those of the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth (**the Commonwealth Act**) by:
  - (i) amending the definition of **certifying officer** and substituting the definition of **permitted purpose** so that those definitions correspond with the definitions in the Commonwealth Act in their application to New South Wales, and
  - (ii) providing for the Inspector of the Independent Commission Against Corruption and the Inspector of the Police Integrity Commission to be eligible authorities for the purposes of the Principal Act, and
  - (iii) providing for the Ombudsman to have comparable powers to the Commonwealth Ombudsman to obtain information or ask questions when conducting an inspection of an eligible authority's records, and

- (iv) providing for the record-keeping requirements for an eligible authority to be consistent with the record-keeping requirements for Commonwealth agencies under the Commonwealth Act, and
  - (v) removing the requirement for eligible authorities to provide copies of warrants issued to them (and copies of instruments revoking such warrants) to the Minister, and
  - (vi) enabling the Ombudsman to exchange information with the Commonwealth Ombudsman in relation to certain matters concerning the administration of the Principal Act and the Commonwealth Act, and
- (b) to make other amendments to the Principal Act in the nature of statute law revision and of a savings and transitional nature.

## 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 to the proposed Act.

**Clause 3** is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced, the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## Schedule 1 Amendments

**Schedule 1 [1]** amends the definition of *certifying officer* in section 3 (1) of the Principal Act so that a certifying officer in relation to the New South Wales Crime Commission includes a member of the staff of the Commission who is authorised to be a certifying officer of the Commission under section 5AC (5) of the Commonwealth Act. Section 5AC (5) of the Commonwealth Act enables the Commissioner for the New South Wales Crime Commission to authorise, in writing, a member of the staff of the Commission who occupies an office or position at an equivalent level to that of a senior executive officer within the meaning of the *Public Sector Employment and Management Act 2002* to be a certifying officer of the Commission.

**Schedule 1 [2]** amends the definition of *eligible authority* in section 3 (1) of the Principal Act to include the Inspector of the Independent Commission Against Corruption and the Inspector of the Police Integrity Commission.

**Schedule 1 [3]** amends the definition of *officer* in section 3 (1) of the Principal Act to replace an outdated reference to the *Police Service Act 1990* with a reference to the *Police Integrity Commission Act 1996*.

**Schedule 1 [4]** replaces the definition of *Part VI warrant* in section 3 (1) of the Principal Act with a definition of *Part 2-5 warrant*. Warrants that were previously issued under Part VI of the Commonwealth Act are now issued under Part 2-5 of that Act. **Schedule 1 [9]** makes consequential amendments to section 5 of the Principal Act.

**Schedule 1 [5]** substitutes the definition of *permitted purpose* in section 3 (1) of the Principal Act. The new definition mirrors the definition of *permitted purpose* in the Commonwealth Act in its application to New South Wales agencies. In particular, the new definition includes references to certain activities carried out by the Independent Commission Against Corruption, the Inspector of the Independent Commission Against Corruption, the Inspector of the Police Integrity Commission and the Police Integrity Commission. The new definition also includes:

- (a) new kinds of activities in connection with appointment, re-appointment, term of appointment, retirement and termination of appointment of officers or members of staff of the Police Force, and
- (b) the keeping of records by an eligible authority under sections 4 and 5 of the Principal Act.

**Schedule 1 [6]** inserts section 3A in the Principal Act. The new section seeks to clarify, in a non-exhaustive manner, the kinds of information or questions that can be treated as being information or a question that is relevant to an inspection of an eligible authority's records in connection with the exercise of the Ombudsman's powers to inspect and report on such records. The new section mirrors the provisions of section 5C of the Commonwealth Act in connection with the Commonwealth Ombudsman's inspection powers. In particular, the new section makes it clear that information or a question will be relevant if it is about a matter relating to a contravention of the Principal Act or the Commonwealth Act that the Ombudsman suspects on reasonable grounds to have occurred.

**Schedule 1 [7]** amends section 4 of the Principal Act to enable an eligible authority to keep either the original of a warrant that has been issued to it or a certified copy of such a warrant. Currently, section 4 requires an eligible authority to keep only a certified copy of the warrant.

**Schedule 1 [8]** amends section 4 of the Principal Act to update an outdated reference to a provision of the Commonwealth Act.

**Schedule 1 [10] and [12]** amend section 5 of the Principal Act to require a record of certain additional particulars to be kept by an eligible authority in relation to its exercise of an authority given by a Part 2-5 warrant. These additional particulars are consistent with the particulars that Commonwealth agencies are required to keep under section 81 of the Commonwealth Act.

**Schedule 1 [11]** amends section 5 of the Principal Act to enable records kept under that section to be by means of a computer instead of in written form. The amendment makes the obligation imposed on eligible authorities consistent with the obligation imposed on Commonwealth agencies by section 81 of the Commonwealth Act.

**Schedule 1 [13]** amends section 6 of the Principal Act to remove the requirement currently imposed on an eligible authority to provide the Minister with a copy of any warrant issued to the authority and each instrument revoking such a warrant. Section 59A of the Commonwealth Act requires copies of such warrants to be given to the Secretary of the Commonwealth Attorney-General's Department. **Schedule 1 [15]** re-enacts section 7 of the Principal Act to remove references to the instruments referred to in the provisions removed from section 6.

**Schedule 1 [14]** amends section 6 of the Principal Act to update an outdated reference to a provision of the Commonwealth Act.

**Schedule 1 [16]** inserts section 19A in the Principal Act to enable the State Ombudsman to exchange information with the Commonwealth Ombudsman in relation to certain matters concerning the administration of the Principal Act and the Commonwealth Act. Section 92A of the Commonwealth Act authorises the Commonwealth Ombudsman to exchange information with a State Ombudsman about State agencies that the Commonwealth Ombudsman has obtained under the Commonwealth Act.

**Schedule 1 [17]** inserts provisions of a savings or transitional nature in the Principal Act.

First print



New South Wales

# Telecommunications (Interception and Access) (New South Wales) Amendment Bill 2008

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Telecommunications (Interception and Access) (New South Wales) Act 1987 No 290	2
4 Repeal of Act	2
Schedule 1 Amendments	3





New South Wales

# Telecommunications (Interception and Access) (New South Wales) Amendment Bill 2008

No. , 2008

---

## A Bill for

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.

---

<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Telecommunications (Interception and Access) (New South Wales) Amendment Act 2008</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6
<b>3 Amendment of Telecommunications (Interception and Access) (New South Wales) Act 1987 No 290</b>	7 8
The <i>Telecommunications (Interception and Access) (New South Wales) Act 1987</i> is amended as set out in Schedule 1.	9 10
<b>4 Repeal of Act</b>	11
(1) This Act is repealed on the day following the day on which this Act commences.	12 13
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	14 15



---

<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 3 Definitions</b>	3
	Omit paragraph (b) of the definition of <i>certifying officer</i> in section 3 (1).	4
	Insert instead:	5
	(b) in the case of the New South Wales Crime Commission:	6
	(i) a member of that Commission, or	7
	(ii) a member of the staff of that Commission who is	8
	authorised to be a certifying officer of the	9
	Commission under section 5AC (5) of the	10
	Commonwealth Act, or	11
<b>[2]</b>	<b>Section 3 (1), definition of “eligible authority”</b>	12
	Insert at the end of paragraph (e) of the definition:	13
	, or	14
	(f) the Inspector of the Independent Commission Against	15
	Corruption, or	16
	(g) the Inspector of the Police Integrity Commission.	17
<b>[3]</b>	<b>Section 3 (1), definition of “officer”</b>	18
	Omit “ <i>Police Service Act 1990</i> ” from paragraph (d).	19
	Insert instead “ <i>Police Integrity Commission Act 1996</i> ”.	20
<b>[4]</b>	<b>Section 3 (1), definition of “Part 2-5 warrant”</b>	21
	Omit the definition of <i>Part VI warrant</i> . Insert instead:	22
	<i>Part 2-5 warrant</i> means a warrant issued or to be issued under	23
	Part 2-5 of the Commonwealth Act.	24
<b>[5]</b>	<b>Section 3 (1), definition of “permitted purpose”</b>	25
	Omit the definition. Insert instead:	26
	<i>permitted purpose</i> , in relation to an eligible authority, means:	27
	(a) in any case:	28
	(i) an investigation by the authority of a prescribed	29
	offence within the meaning of the Commonwealth	30
	Act, or	31
	(ii) the making by an authority, body or person of a	32
	decision whether or not to begin a relevant	33
	proceeding in relation to the authority, or	34

Telecommunications (Interception and Access) (New South Wales)  
Amendment Bill 2008

Schedule 1 Amendments

---

- (iii) a relevant proceeding in relation to the authority, or 1
- (iv) the exercise by the chief officer of the authority of 2  
the powers conferred by section 68 of the 3  
Commonwealth Act, or 4
- (v) an inspection of the authority's records that is made 5  
under section 10, or 6
- (vi) a report on such an inspection, or 7
- (vii) the keeping of records by the authority under 8  
sections 4 and 5, or 9
- (b) in the case of the Police Force: 10
  - (i) an investigation of, or an inquiry into, alleged 11  
misbehaviour, or alleged improper conduct, of an 12  
officer of the State of New South Wales, being an 13  
investigation or inquiry under a law of this State or 14  
by a person in the person's capacity as an officer of 15  
this State, or 16
  - (ii) a report on such an investigation or inquiry, or 17
  - (iii) the making by a person of a decision in relation to 18  
the appointment, re-appointment, term of 19  
appointment, retirement or termination of 20  
appointment of an officer or member of staff of the 21  
Police Force, or 22
  - (iv) a review (whether by way of appeal or otherwise) of 23  
such a decision, or 24
  - (v) the tendering to the Governor of advice to terminate, 25  
because of misbehaviour or improper conduct, the 26  
appointment of an officer of this State, or 27
  - (vi) deliberations of the Executive Council in 28  
connection with advice to the Governor to 29  
terminate, because of misbehaviour or improper 30  
conduct, the appointment of an officer of this State, 31  
or 32
- (c) in the case of the Independent Commission Against 33  
Corruption: 34
  - (i) an investigation under the *Independent Commission 35  
Against Corruption Act 1988* into whether corrupt 36  
conduct (within the meaning of that Act) may have 37  
occurred, may be occurring or may be about to 38  
occur, or 39
  - (ii) a report on such an investigation, or 40

---

(d)	in the case of the Inspector of the Independent Commission Against Corruption:	1
	(i) dealing with (by reports and recommendations) complaints of abuse of power, impropriety or other forms of misconduct (within the meaning of the <i>Independent Commission Against Corruption Act 1988</i> ) on the part of the Independent Commission Against Corruption or officers of that Commission, or	2
	(ii) dealing with (by reports and recommendations) conduct amounting to maladministration (within the meaning of the <i>Independent Commission Against Corruption Act 1988</i> ) by the Independent Commission Against Corruption or officers of that Commission, or	3
(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 <i>Police Integrity Commission Act 1996</i> ) on the part of the Police Integrity Commission or officers of that Commission, or	4
(f)	in the case of the Police Integrity Commission:	5
	(i) an investigation under the <i>Police Integrity Commission Act 1996</i> of police misconduct of an officer of the Police Force, or	6
	(ii) a report on such an investigation, or	7
	(iii) the tendering to the Governor of advice to terminate, because of misbehaviour or improper conduct, the appointment of the Commissioner of Police, or	8
	(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.	9
<b>[6] Section 3A</b>		10
	Insert after section 3:	11
<b>3A Information or question relevant to inspection by Ombudsman</b>		12
(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:	13

---

(a)	the location of any of those records, or	1
(b)	the making, compilation or keeping of any of those records, or	2 3
(c)	the accuracy or completeness of any of those records, or	4
(d)	any matter to which any of those records relates, or	5
(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.	6 7 8 9
(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.	10 11 12
<b>[7]</b>	<b>Section 4 Eligible authority to keep documents connected with issue of warrants</b>	13 14
	Omit section 4 (a). Insert instead:	15
(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),	16 17 18
<b>[8]</b>	<b>Section 4 (b)</b>	19
	Omit “section 53 (1) (b)”. Insert instead “section 59A (2)”.	20
<b>[9]</b>	<b>Section 5 Other records to be kept by an eligible authority in connection with interceptions</b>	21 22
	Omit “Part VI” wherever occurring in section 5 (1). Insert instead “Part 2-5”.	23
<b>[10]</b>	<b>Section 5 (1) (b1)</b>	24
	Insert after section 5 (1) (b):	25
(b1)	in relation to each Part 2-5 warrant whose authority is exercised by the eligible authority, particulars of:	26 27
(i)	the warrant, and	28
(ii)	the day on which, and the time at which, each interception under the warrant began, and	29 30
(iii)	the duration of each such interception, and	31
(iv)	the name of the person who carried out each such interception, and	32 33
(v)	in relation to a named person warrant—each service to or from which communications have been intercepted under the warrant,	34 35 36

---

<b>[11]</b>	<b>Section 5 (1)</b>	1
	Insert “or by means of a computer” after “in writing”.	2
<b>[12]</b>	<b>Section 5 (1A)</b>	3
	Insert after section 5 (1):	4
	(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.	5 6 7
<b>[13]</b>	<b>Section 6 Documents to be given by an eligible authority to the Minister</b>	8
	Omit section 6 (a).	9
<b>[14]</b>	<b>Section 6 (c)</b>	10
	Omit “Part IX”. Insert instead “Part 2-8”.	11
<b>[15]</b>	<b>Section 7</b>	12
	Omit the section. Insert instead:	13
	<b>7 Documents to be given by State Minister to Commonwealth Minister</b>	14 15
	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 17 18 19
<b>[16]</b>	<b>Section 19A</b>	20
	Insert after section 19:	21
	<b>19A Exchange of information between Ombudsman and Commonwealth Ombudsman</b>	22 23
	(1) The Ombudsman may enter into an arrangement (an <i>information sharing arrangement</i> ) with the Commonwealth Ombudsman for the purpose of sharing or exchanging information held by the Ombudsman and the Commonwealth Ombudsman.	24 25 26 27
	(2) The information to which an information sharing arrangement may relate is limited to the following:	28 29
	(a) information concerning eligible authorities,	30
	(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.	31 32 33 34

Schedule 1 Amendments

---

(3)	Under an information sharing arrangement, the Ombudsman and the Commonwealth Ombudsman are, despite any other Act or other law of the State, authorised:	1
		2
		3
(a)	to request and receive information held by the other party to the arrangement, and	4
		5
(b)	to disclose information to the other party,	6
	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.	7
		8
		9
		10
(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.	11
		12
		13
		14
(5)	In this section:	15
	<i>Commonwealth Ombudsman</i> means the Commonwealth Ombudsman appointed under the <i>Ombudsman Act 1976</i> of the Commonwealth.	16
		17
		18
[17]	<b>Section 25 and Schedule 1</b>	19
	Insert after section 24:	20
	<b>25 Savings, transitional and other provisions</b>	21
	Schedule 1 has effect.	22
	<b>Schedule 1 Savings, transitional and other provisions</b>	23
		24
	(Section 25)	25
	<b>Part 1 General</b>	26
	<b>1 Regulations</b>	27
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	28
		29
		30
	<i>Telecommunications (Interception and Access) (New South Wales) Amendment Act 2008</i>	31
		32
(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.	33
		34

---

(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:	1
		2
		3
(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	4
		5
		6
(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.	7
		8
		9
<b>Part 2</b>	<b>Provisions consequent on enactment of Telecommunications (Interception and Access) (New South Wales) Amendment Act 2008</b>	10
		11
		12
		13
<b>2</b>	<b>Definition</b>	14
	In this Part:	15
	<i>amending Act</i> means the <i>Telecommunications (Interception and Access) (New South Wales) Amendment Act 2008</i> .	16
		17
<b>3</b>	<b>Application of amendments</b>	18
(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.	19
		20
		21
		22
(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.	23
		24
		25