

**TELECOMMUNICATIONS (INTERCEPTION) (NEW SOUTH WALES) AMENDMENT BILL 1989**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The object of this Bill is to amend the Telecommunications (Interception) (New South Wales) Act 1987 so as to enable the Independent Commission Against Corruption to be declared to be an agency for the purposes of the Telecommunications (Interception) Act 1979 of the Commonwealth. The declaration is intended to be made under section 34 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 that the proposed Act is to commence on a day or days to be proclaimed.**

**Clause 3 is a formal provision giving effect to the Schedule of amendments.**

**SCHEDULE 1 - AMENDMENTS**

**"Agency" and "eligible authority"**

Schedule 1 (1) (a) amends the definition of "agency" in section 3 of the Principal Act, so as:

- (a) to include a reference to the Independent Commission Against Corruption as an agent; and
- (b) to update the definition by providing that any authority of another State or a Territory in relation to which a declaration under section 34 of the Commonwealth Act is in force is an agency (the definition is presently

limited in that section to a reference to the Police Force of any such State or Territory).

Schedule 1 (1) (f) amends the definition of "eligible authority" in section 3 of the Principal Act to include a reference to the Independent Commission Against Corruption. It is a requirement of the Commonwealth Act that any proposed agency be first designated as an "eligible authority" by State law, and that any eligible authority be bound by certain procedural and other requirements. In particular, an eligible authority is subject to monitoring by an independent authority. (In New South Wales, it is the Ombudsman. See Part 3 of the Principal Act.)

### **Safeguard provisions**

The power to intercept telecommunications must be exercised according to strict procedural requirements. The Commonwealth Act specifies certain conditions that must be met by any State authority or body proposed to be designated as an agent for its purposes. These conditions involve the making by State law of provisions regulating the duties of agents and their officers in respect of due process (in the procuring of warrants etc.) and dealings with information obtained by interception activities. The amendments described below are for the most part strictly necessary for compliance with the Commonwealth Act.

### **Certifying officer**

Schedule 1 (1) (b) amends the definition of "certifying officer" in section 3 of the Principal Act to include a reference to the Commissioner or an Assistant Commissioner of the Independent Commission Against Corruption.

A certifying officer of an eligible authority:

- (a) certifies in writing that a copy of each warrant authorising the interception of telecommunications issued to the authority is a true copy of the warrant;
- (b) certifies in writing that a copy of each instrument revoking such a warrant is a true copy of the instrument; and
- (c) is empowered to issue a written evidentiary certificate for the purposes of section 61 (4) of the Commonwealth Act.

### **Chief officer**

Schedule 1 (1) (c) amends the definition of "chief officer" in section 3 of the Principal Act to include a reference to the Commissioner of the Independent Commission Against Corruption. Various obligations to keep documents connected with the issue and revocation of warrants and other records are imposed on chief officers of eligible authorities in Part 2 of the Principal Act.

### **Officers of the Commission**

Schedule 1 (1) (g) amends the definition of "officer" in section 3 of the Principal Act to include certain officers of the Independent Commission Against Corruption.

Intercepted information may be communicated to an officer of an agency who has applied for a warrant or who has been authorised by the chief officer of the agency

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to receive information. An officer to whom such information is communicated may then make use of, communicate or make a record of the information.

**Authority to disclose information obtained by interception**

Schedule 1 (2) amends section 21 (Disclosure by persons under the Minister's administration) to provide that any information or record obtained by a person (other than the Ombudsman and the Ombudsman's officers) engaged in the administration of the Principal Act may now be disclosed for the purpose of proceedings:

- (a) under section 17, 18 or 20 of the State Drug Crime Commission Act 1985 (relating to the power to obtain documents, failure of witnesses to attend and answer questions and false or misleading evidence); or
- (b) under Part 9 (Offences) of the Independent Commission Against Corruption Act 1988.

**Minor amendments**

Schedule 1 (1) (d) omits the definition of "Commission" from the Principal Act. The full title of the State Drug Crime Commission will now be used in the Principal Act.

Schedule 1 (1) (e) omits the definition of "communication" from the Principal Act. The definition found in the Commonwealth Act (adopted by section 3 (2) of the Principal Act) will be relied upon for reasons of uniformity.

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