

Telecommunications (Interception and Access) (New South Wales) Act 1987 No 290

[1987-290]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Telecommunications (Interception) (New South Wales) Act 1987
- **Does not include amendments by**
[Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
- **See also**
[Telecommunications \(Interception and Access\) \(New South Wales\) Amendment Bill 2008](#)

Authorisation

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Telecommunications (Interception and Access) (New South Wales) Act 1987 No 290



New South Wales

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.

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Definitions

(1) In this Act:

agency means:

- (a) the Australian Federal Police,
- (b) the Australian Crime Commission,
- (c) the Police Force,
- (d) the New South Wales Crime Commission,
- (e) the Independent Commission Against Corruption,
- (e1) the Police Integrity Commission,
- (e2) the Police Royal Commission, or
- (f) any authority of another State or a Territory 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 New South Wales Crime Commission—a member of that Commission, or
- (c) in the case of the Independent Commission Against Corruption—the Commissioner or an Assistant Commissioner of that Commission, or
- (d) in the case of the Police Integrity Commission—the Commissioner or an Assistant Commissioner of that Commission, or
- (e) in the case of the Police Royal Commission—the Police Royal Commissioner.

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 New South Wales Crime Commission—the Chairperson of that Commission, or
- (c) in the case of the Independent Commission Against Corruption—the Commissioner of that Commission, or
- (d) in the case of the Police Integrity Commission—the Commissioner of that Commission,
- (e) in the case of the Police Royal Commission—the Police Royal Commissioner.

eligible authority means:

- (a) the Police Force, or
- (b) the New South Wales Crime Commission, or
- (c) the Independent Commission Against Corruption, or
- (d) the Police Integrity Commission, or
- (e) the Police Royal Commission.

inspecting officer means:

- (a) the Ombudsman,
- (b) the Deputy Ombudsman holding office under the [Ombudsman Act 1974](#),
- (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 New South Wales Crime Commission—a member, or a member of the staff, of that Commission, or
- (c) in the case of the Independent Commission Against Corruption—an officer (as defined by the [Independent Commission Against Corruption Act 1988](#)) of that Commission, or
- (d) in the case of the Police Integrity Commission—an officer of the Commission (as defined in the [Police Service Act 1990](#)), or
- (e) in the case of the Police Royal Commission—an officer of the Police Royal Commission as defined in the [Police Integrity Commission Act 1996](#).

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.

Police Royal Commission and **Police Royal Commissioner** have the same meanings as in the [Police Integrity Commission Act 1996](#).

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 and Access) 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

4 Eligible authority to keep documents connected with issue of warrants

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.

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

- (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,
- (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.

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

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 3 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.

7 Documents to be given by State Minister to Commonwealth Minister

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.

8 Keeping and destruction of restricted records

- (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

9 Functions—generally

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.

10 Regular inspections of an eligible authority's records

- (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.

11 Reports

- (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.
- (1A) The Ombudsman must include in each report under subsection (1) in relation to a financial year (starting with the financial year beginning on 1 July 2006) the following:
 - (a) a summary of the inspections conducted in the financial year under section 10,
 - (b) particulars of any deficiencies identified that impact on the integrity of the telecommunications interception regime established by the Commonwealth Act,
 - (c) particulars of the remedial action (if any) taken or proposed to be taken to address those deficiencies.

Note—

In complying with this section, the Ombudsman remains bound by section 63 of the Commonwealth Act, which prohibits the disclosure of intercepted information or designated warrant information.

- (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.

12 Ombudsman may report on breaches

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.

13 Ombudsman's general powers

- (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.

14 Power to obtain relevant information

- (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.
- (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.

15 Ombudsman to be given information and access notwithstanding other laws

- (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:

(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).

16 Dealing with information for the purposes of inspection and report

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.

17 Ombudsman not to be sued

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.

18 Delegation by Ombudsman

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.

19 Application of the [Ombudsman Act 1974](#)

(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.

(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

20 Copies of reports for Commonwealth Minister

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.

21 Disclosure by persons under the Minister's administration

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 3 of the *Royal Commissions Act 1923*,
 - (iii) Part 4 of the *Special Commissions of Inquiry Act 1983*,
 - (iv) section 17, 18 or 20 of the *New South Wales Crime Commission Act 1985*,
 - (v) Part 9 of the *Independent Commission Against Corruption Act 1988*, or
 - (vi) the *Police Integrity Commission Act 1996*, or
 - (vii) the *Royal Commission (Police Service) Act 1994*, or
- (c) for the purpose of discharging the person's functions under this or any other Act.

Penalty: 10 penalty units.

22 Offences relating to inspections under Part 3

- (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:

- (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.

23 Proceedings for offences

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.

24 Regulations

- (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.