



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
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- (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.

Explanatory note

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.