Telecommunications (Interception) and Listening Device Amendment Act 1997

Act No. 160 of 1997 as amended

This compilation was prepared on 20 August 2001

[This Act was amended by Act No. 151 of 1999]

Amendments from Act No. 151 of 1999

[Schedule 2 (item 1) repealed section 3; commenced 11 November 1999]

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Telecommunications (Interception) and Listening Device Amendment Act 1997
An Act to amend the Telecommunications (Interception) Act 1979, the Australian Federal Police Act 1979, the Customs Act 1901 and the Financial Transaction Reports Act 1988, and for related purposes

1 Short title

This Act may be cited as the Telecommunications (Interception) and Listening Device Amendment Act 1997.

2 Commencement

(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(2) The following provisions commence on a day or days to be fixed by Proclamation:
   (a) items 6, 19, 20, 24, 25, 27 to 39 (inclusive) and 47 to 50 (inclusive) of Schedule 1;
   (b) Schedule 2;
   (c) items 1 to 8 (inclusive) and 11 to 13 (inclusive) of Schedule 3.

(3) If an item of a Schedule to this Act does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

4 Schedule(s)

Subject to sections 2 and 3, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendment of the Telecommunications (Interception) Act 1979

1 Subsection 5(1) (at the end of the definition of certifying officer)
Add:
; or (g) in the case of the Police Integrity Commission:
   (i) the Commissioner of the Police Integrity Commission;
or
   (ii) an Assistant Commissioner of the Police Integrity Commission; or
   (iii) a member of the staff of the Police Integrity Commission who is a Senior Executive Service officer within the meaning of the Public Sector Management Act 1988 of New South Wales and is authorised in writing by the Commissioner of the Commission for the purposes of this paragraph.

2 Subsection 5(1) (paragraph (d) of the definition of chief officer)
Omit “Chairperson”, substitute “Commissioner”.

3 Subsection 5(1) (at the end of the definition of chief officer)
Add:
; or (h) in the case of the Police Integrity Commission—the Commissioner of the Commission.

4 Subsection 5(1) (paragraph (b) of the definition of eligible authority)
Omit “or the Independent Commission Against Corruption”, substitute “, the Independent Commission Against Corruption or the Police Integrity Commission”.

5 Subsection 5(1)
Insert:

2 Telecommunications (Interception) and Listening Device Amendment Act 1997
member of the staff of the Policy Integrity Commission means a person who is, for the purposes of the Police Integrity Commission Act, a member of the staff of the Commission.

6 Subsection 5(1)
Insert:

nominated AAT member means a member of the Administrative Appeals Tribunal in respect of whom a nomination is in force under section 6DA to issue warrants under Part VI.

7 Subsection 5(1) (at the end of the definition of officer)
Add:
; or (h) in the case of the Police Integrity Commission:
(i) the Commissioner or Assistant Commissioner of the Police Integrity Commission; or
(ii) a member of the staff of the Policy Integrity Commission.

8 Subsection 5(1)
Insert:

Police Integrity Commission means the Police Integrity Commission of New South Wales.

9 Subsection 5(1)
Insert:

Police Integrity Commission Act means the Police Integrity Commission Act 1996 of New South Wales.

10 Subsection 5(1) (after subparagraph (b)(ii) of the definition of permitted purpose)
Insert:

(iia) the making by a person of a decision under the Australian Federal Police Act 1979 in relation to the appointment, re-appointment, term of appointment or retirement of a member of the Australian Federal Police or a staff member of the Australian Federal Police;
(iib) a review (whether by way of appeal or otherwise) of such a decision;

11 Subsection 5(1) (after subparagraph (c)(ii) of the definition of permitted purpose)

Insert:

(iiia) the making by a person of a decision in relation to the appointment, re-appointment, term of appointment or retirement of an officer or member of staff of that Police Force;

(iiib) a review (whether by way of appeal or otherwise) of such a decision;

12 Subsection 5(1) (at the end of the definition of permitted purpose)

Add:

; or (e) in the case of the Police Integrity Commission:

(i) an investigation under the Police Integrity Commission Act of police misconduct of an officer of the New South Wales Police Service; or

(ii) a report on such an investigation; or

(iii) the tendering to the Governor of New South Wales of advice to terminate, because of misbehaviour or improper conduct, the appointment of the Commissioner of the New South Wales Police Service; or

(iv) deliberations of the Executive Council of New South Wales in connection with advice to the Governor of that State to terminate, because of misbehaviour or improper conduct, the appointment of the Commissioner of the New South Wales Police Service.

13 Subsection 5(1) (at the end of the definition of prescribed investigation)

Add:

; or (f) in the case of the Police Integrity Commission—means an investigation that the Commission is conducting in the
performance of its functions under the Police Integrity Commission Act.

14 Subsection 5(1) (at the end of the definition of relevant offence)
Add:
; or (h) in the case of the Police Integrity Commission—a prescribed offence that is an offence against the law of New South Wales and to which a prescribed investigation relates.

15 After paragraph 5B(d)
Insert:
(da) a proceeding by way of a coroner’s inquest if, in the opinion of the coroner, the event that is the subject of the inquest may have resulted from the commission of a prescribed offence; or

16 Paragraph 5B(i) (second occurring)
Reletter as paragraph (j).

17 At the end of section 5B
Add:
; or (k) a proceeding of the Police Integrity Commission; or
(l) a proceeding by way of a bail application if the application relates to a proceeding by way of a prosecution for a prescribed offence; or
(m) a proceeding by way of review of a decision to refuse such a bail application.

Note: Paragraphs (l) and (m) were inserted as a response to the decision of the Court of Appeal of New South Wales in Director of Public Prosecutions v Serratore (1995) 132 ALR 461.

18 Paragraph 6A(1)(c)
Omit “or the Independent Commission Against Corruption”, substitute “, the Independent Commission Against Corruption or the Police Integrity Commission”.

19 After section 6D

Telecommunications (Interception) and Listening Device Amendment Act 1997
Insert:

6DA Nominated AAT members may issue Part VI warrants for use of listening devices

(1) The Minister may, by writing, nominate a person who holds one of the following appointments to the Administrative Appeals Tribunal to issue warrants under Part VI:
   (a) Deputy President;
   (b) full-time senior member;
   (c) part-time senior member;
   (d) member.

(2) Despite subsection (1), the Minister must not nominate a person who holds an appointment as a part-time senior member or a member of the Tribunal unless the person:
   (a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or of the Australian Capital Territory; and
   (b) has been so enrolled for not less than 5 years.

(3) A nomination ceases to have effect if:
   (a) the nominated AAT member ceases to hold an appointment of a kind set out in subsection (1); or
   (b) the Minister, by writing, withdraws the nomination.

(4) A nominated AAT member has, in performing a function of or connected with, issuing a warrant under Part VI, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

20 Section 6H

Omit “Judge” (wherever occurring), substitute “Judge or nominated AAT member”.

21 At the end of section 6K

Add:
; and (c) a proceeding by way of an application for a restraining order, or an order that is ancillary to a restraining order, under any of the following:

(i) the *Proceeds of Crime Act 1987*;
(ii) the *Confiscation of Proceeds of Crime Act 1989* of New South Wales;
(iii) the *Crimes (Confiscation of Profits) Act 1986* of Victoria;
(iv) the *Crimes (Confiscation of Profits) Act 1989* of Queensland;
(v) the *Crimes (Confiscation of Profits) Act 1988* of Western Australia;
(vi) the *Crimes (Confiscation of Profits) Act 1986* of South Australia;
(vii) the *Criminal Assets Confiscation Act 1996* of South Australia;
(viii) the *Crime (Confiscation of Profits) Act 1993* of Tasmania;
(ix) the *Proceeds of Crime Act 1991* of the Australian Capital Territory;
(x) the *Crimes (Forfeiture of Profits) Act 1988* of the Northern Territory.

22 Paragraph 6L(2)(b)

Omit “or the Independent Commission Against Corruption”, substitute “, the Independent Commission Against Corruption or the Police Integrity Commission”.

23 After subsection 7(6)

Insert:

(6A) Subsection (6) does not apply if action has been taken under subsection (4) or (5) to intercept a communication, or cause it to be intercepted, and the action has ceased before it is practicable for an application for a Part VI warrant to be made.

24 Subsection 7(7)

Omit “judge”, substitute “Judge or nominated AAT member”.

*Telecommunications (Interception) and Listening Device Amendment Act 1997* 7
25 Subsection 39(1)
Omit “Judge”, substitute “Judge or nominated AAT member”.

26 At the end of subsection 39(2)
Add:
; or (g) in the case of the Police Integrity Commission:
(i) an Assistant Commissioner or the Commissioner of the Police Integrity Commission; or
(ii) a member of the staff of the Police Integrity Commission.

27 Section 43
Omit “Judge” (wherever occurring), substitute “Judge or nominated AAT member”.

28 Section 44
Omit “Judge” (wherever occurring), substitute “Judge or nominated AAT member”.

29 Section 45
Omit “Judge” (wherever occurring), substitute “Judge or nominated AAT member”.

30 Section 46
Omit “Judge” (wherever occurring), substitute “Judge or nominated AAT member”.

31 Subsection 48(3)
Omit “Judge” (wherever occurring), substitute “Judge or nominated AAT member”.

32 Subsection 48(4)
Omit “Judge”, substitute “Judge or nominated AAT member”.

33 Subsection 48(5)
Omit “Judge” (wherever occurring), substitute “Judge or nominated AAT member”.

8 Telecommunications (Interception) and Listening Device Amendment Act 1997
34 Section 49
Omit “Judge” (wherever occurring), substitute “Judge or nominated AAT member”.

35 Section 50
Omit “Judge” (wherever occurring), substitute “Judge or nominated AAT member”.

36 Subsection 51(2)
Omit “Judge”, substitute “Judge or nominated AAT member”.

37 Subsection 51(3)
Omit “Judge”, substitute “Judge or nominated AAT member”.

38 Subsection 52(1)
Omit “Judge”, substitute “Judge or nominated AAT member”.

39 Subsection 53(2)
Omit “Judge” (wherever occurring), substitute “Judge or nominated AAT member”.

40 Paragraph 55(6)(a)
After “warrant”, insert “, to the extent that the act is incidental to the doing of an act referred to in paragraph (b)”.

41 Subsections 55(8) and (9)
Repeal the subsections.

42 Section 67
After “officer”, insert “or staff member”.

43 At the end of section 68
Add:
; and (f) if the information relates, or appears to relate, to a matter that may give rise to an investigation by the Police Integrity
Commission—to the Commissioner of the Police Integrity Commission.

44 Paragraph 81(1)(c)
After “warrant” (first occurring), insert “whose authority is exercised by the agency”.

45 After paragraph 81(2)(b)
Insert:

(ba) in relation to each Part VI warrant whose authority is exercised by the Authority, particulars of:

(i) the warrant; and
(ii) the day on which, and the time at which, each interception under the warrant began; and
(iii) the duration of each such interception; and
(iv) the name of the person who carried out each such interception; and

46 At the end of paragraphs 81(2)(a), (b), (c) and (d)
Add “and”.

47 Paragraph 81A(2)(b)
Omit “Judge”, substitute “Judge or nominated AAT member”.

48 Paragraph 81A(2)(g)
Omit “Judge”, substitute “Judge or nominated AAT member”.

49 Paragraph 81C(2)(b)
Omit “Judge”, substitute “Judge or nominated AAT member”.

50 Paragraph 81C(2)(g)
Omit “Judge”, substitute “Judge or nominated AAT member”.

51 After section 94
Insert:
94A Reports regarding emergency interception action

(1) The chief officer of an agency referred to in subsection 7(8) must give to the Minister a written report concerning:
   (a) an emergency interception action taken by an officer of the agency that, because of the operation of subsection 7(6A), took place without a warrant under Part VI; and
   (b) an emergency interception action taken by an officer of the agency in respect of which an application for a warrant was made under Part VI and refused.

(2) The chief officer of the agency must give the report within 3 months after:
   (a) in the case set out in paragraph (1)(a)—the date on which the action ceased; and
   (b) in the case set out in paragraph (1)(b)—the date on which the application was refused.

(3) The report must contain the following information:
   (a) if an interception occurred:
      (i) the date and time at which the interception began; and
      (ii) the duration of the interception;
   (b) if there was no interception but action had been taken to cause a communication to be intercepted—details of the action taken;
   (c) the circumstances that led the officer concerned to believe that the conditions of subsection 7(4) or (5) were satisfied;
   (d) in the case set out in paragraph (1)(a)—the reasons it was not practicable to apply for a warrant under Part VI in relation to the action;
   (e) in the case set out in paragraph (1)(b)—the reasons the judge or nominated AAT member refused the application if the reasons are known;
   (f) information about the use made by the agency of information obtained by the interception;
   (g) information about the communication of such information to persons other than officers of the agency;
   (h) the number of arrests that have been, or are likely to be, made on the basis of such information;
(i) an assessment of the usefulness of information obtained by the interception.

(4) In this section:

**emergency interception action** means an interception done under subsection 7(4) or (5) or action taken under one of those subsections to cause an interception to occur.

52 After paragraph 103(aa)

Insert:

(ab) information about the availability of judges to issue warrants under Part VI and the extent to which nominated AAT members have been used for that purpose, but not including information that would identify a particular judge or AAT member; and

53 After section 103

Insert:

103A Annual report for 1999-2000

(1) The annual report for 1999-2000 must include a review of the amendments made by the Telecommunications (Interception) and Listening Device Amendment Act 1997 to this Act.

(2) For the purposes of the review, the Minister must arrange for a public notice, in plain English, to be published in at least one daily newspaper circulating in each State and Territory, calling for submissions from the public on the operation of amendments providing for the issuing of warrants by nominated AAT members, and including an address to which submissions may be sent.
Schedule 2—Amendment of the Australian Federal Police Act 1979

1 Section 12B
   Insert:

   nominated AAT member means a member of the Administrative Appeals Tribunal in respect of whom a nomination is in force under section 12DA to issue warrants under section 12G for use of listening devices.

2 After section 12D
   Insert:

   12DA Nominated AAT members may issue warrants for use of listening devices

   (1) The Minister may, by writing, nominate a person who holds one of the following appointments to the Administrative Appeals Tribunal to issue warrants under section 12G for use of listening devices:

   (a) Deputy President;
   (b) full-time senior member;
   (c) part-time senior member;
   (d) member.

   (2) Despite subsection (1), the Minister must not nominate a person who holds an appointment as a senior member or a member of the Tribunal unless the person:

   (a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or of the Australian Capital Territory; and
   (b) has been so enrolled for not less than 5 years.

   (3) A nomination ceases to have effect if:

   (a) the nominated AAT member ceases to hold an appointment of a kind set out in subsection (1); or
   (b) the Minister, in writing, withdraws the nomination.
(4) A nominated AAT member has, in performing a function of or connected with, issuing a warrant, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

3 Section 12G

Omit “Judge” (wherever occurring), substitute “Judge or nominated AAT member”.

4 Section 12H

Omit “Judge”, substitute “Judge or nominated AAT member”.

14 Telecommunications (Interception) and Listening Device Amendment Act 1997
Schedule 3—Amendment of the Customs Act 1901

1 Subsection 219A(1)
Insert:

*nominated AAT member* means a member of the Administrative Appeals Tribunal in respect of whom a nomination is in force under section 219AB to issue warrants under section 219B for use of listening devices.

2 After section 219AA
Insert:

219AB  Nominated AAT members may issue warrants for use of listening devices

(1) The Minister may, by writing, nominate a person who holds one of the following appointments to the Administrative Appeals Tribunal to issue warrants under section 219B for use of listening devices:
   (a) Deputy President;
   (b) full-time senior member;
   (c) part-time senior member;
   (d) member.

(2) Despite subsection (1), the Minister must not nominate a person who holds an appointment as a senior member or a member of the Tribunal unless the person:
   (a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or of the Australian Capital Territory; and
   (b) has been so enrolled for not less than 5 years.

(3) A nomination ceases to have effect if:
   (a) the nominated AAT member ceases to hold an appointment of a kind set out in subsection (1); or
   (b) the Minister, by writing, withdraws the nomination.
3 Subsection 219B(5)  
Omit “Judge” (wherever occurring), substitute “Judge or nominated AAT member”.

4 Subsection 219B(6)  
Omit “Judge”, substitute “Judge or nominated AAT member”.

5 Subsection 219B(7)  
Omit “Judge” (wherever occurring), substitute “Judge or nominated AAT member”.

6 Subsection 219B(8)  
Omit “Judge”, substitute “Judge or nominated AAT member”.

7 Subsection 219B(9)  
Omit “Judge”, substitute “Judge or nominated AAT member”.

8 Section 219C  
Omit “Judge”, substitute “Judge or nominated AAT member”.

9 At the end of paragraph 219F(2)(a)  
Add:  
; or (iv) an officer of the Police Integrity Commission of New South Wales; and

10 At the end of section 219F  
Add:  
(5) In this section:  

officer of the Police Integrity Commission means a person who is, for the purposes of the Police Integrity Commission Act 1996 of New South Wales, an officer of the Police Integrity Commission of New South Wales.

11 Section 219H  
Omit “Judge”, substitute “Judge or nominated AAT member”.

12 Subsection 219K(1)
Omit “Judge”, substitute “Judge or nominated AAT member”.

13 At the end of section 219ZL

Add:

(4) A nominated AAT member has, in performing a function of, or connected with, issuing a warrant under section 219B, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

(5) In this section:

*nominated AAT member* means a member of the Administrative Appeals Tribunal in respect of whom a nomination is in force under section 219AB to issue warrants under section 219B for use of listening devices.
Schedule 4—Amendment of the Financial Transaction Reports Act 1988

1 Subsection 3(1)
Insert:

*Australian Bureau of Criminal Intelligence* means the body known by that name established under an agreement between the Commonwealth and each of the States.

2 Subsection 3(1)
Insert:

*member of the staff of the Police Integrity Commission* means a person who is, for the purposes of the *Police Integrity Commission Act 1996* of New South Wales, a member of the staff of the Commission.

3 Subsection 3(1)
Insert:

*Police Integrity Commission* means the Police Integrity Commission of New South Wales.

4 After subsection 27(1)
Insert:

(1A) Despite paragraph (1)(b), the Director may only authorise the Australian Bureau of Criminal Intelligence and the Police Integrity Commission under that paragraph if the Bureau or the Commission (as the case requires) undertakes that it will comply with the Information Privacy Principles set out in section 14 of the *Privacy Act 1988* in respect of FTR information obtained under the authorisation.

5 At the end of subsection 27(16)
Add:

; and (f) the Police Integrity Commission; and

18 *Telecommunications (Interception) and Listening Device Amendment Act 1997*
(g) the Australian Bureau of Criminal Intelligence.

6 At the end of subsection 27(17)

Add:

; and (p) the Commissioner of the Police Integrity Commission; and

(q) an Assistant Commissioner of the Police Integrity Commission; and

(r) a member of the staff of the Police Integrity Commission; and

(s) a member of the staff of the Australian Bureau of Criminal Intelligence.