

Telecommunications (Interception) Regulations (Amendment) 1997 No. 421

EXPLANATORY STATEMENT

Statutory Rules 1997 No. 421

Issued by the authority of the Attorney-General

Telecommunications (Interception) Act 1979

Telecommunications (Interception) Regulations (Amendment)

The Telecommunications (Interception) Regulations prescribe the forms of judicial warrant authorising the interception of communications for law enforcement purposes under the Act. The *Telecommunications (Interception) and Listening Device Amendment Act 1997* (the Amendment Act) amended the Act to provide, among other things, that the Minister administering the Act - at present the Attorney-General may nominate certain members of the Administrative Appeals Tribunal (the AAT) to undertake the work of issuing warrants under Part VI of the Act. Other amendments of the Act confer on AAT members the power to issue warrants once they have been duly nominated.

The purpose of the proposed Telecommunications (Interception) Regulations (Amendment) is to amend the forms of warrant to refer to nominated AAT members as persons capable of exercising the authority to issue interception warrants under the Act for law enforcement purposes. The amendments are required because the existing prescribed forms are based on the premise that only eligible judges may issue warrants under the Act. References to eligible judges will remain in the prescribed forms of warrant.

The proposed amendments will also update an obsolete reference to the Australian Telecommunications Commission.

Details of the regulations are attached.

The regulations commence on the same day the provisions listed in subsection 2(2) of the Amendment Act are proclaimed to come into effect (1 February 1998).

DETAILS OF THE TELECOMMUNICATIONS (INTERCEPTION) REGULATIONS (AMENDMENT)

Regulation 1: Commencement

This regulation specifies that the regulations commence on 1 February 1998.

Regulation 2: Amendment

This regulation gives effect to the amendments.

Regulation 3: Schedule 3 (Warrant under section 45 for interception of communications):

This regulation adds the term 'a nominated AAT member (within the meaning of the Telecommunications (Interception Act 1979)' to the prescribed form of warrant for section 45 of

the Act. The prescribed form of warrant now refers to both 'an eligible judge' and 'a nominated AAT member' as alternative persons capable of exercising the statutory power to issue a warrant under Part VI of the Act. An applicant for a warrant chooses the appropriate reference according to the circumstances.

Regulation 4: Schedule 4 (Warrant under section 46 for the Interception of communications)

This regulation inserts the same amendments of the form prescribed for warrants under section 46 of the Act as provided in regulation 3.

Regulation 5: Schedule 5 (Warrant under section 48 for entry on premises and interception of communications)

This regulation inserts the same amendments of the form prescribed for warrants under section 48 of the Act as provided in regulation 3.

In addition, subregulation 5.2 deletes an obsolete reference to 'officers of the Australian Telecommunications Commission' (which is now Telstra Corporation Ltd) and substitutes a reference to actions taken 'by, or on behalf of, a carrier' which is consistent with the terms now used in the Act. For the purposes of the Act, 'carrier' means either a licensed carrier or a carriage service provider as defined in the Telecommunications Act 1997.