

Telecommunications (Interception) Amendment Regulations 2000 (No. 1) 2000 No. 180

EXPLANATORY STATEMENT

Statutory Rules 2000 No. 180

Issued by the Authority of the Attorney-General

Telecommunications (Interception) Act 1979

Telecommunications (Interception) Amendment Regulations 2000 (No. 1)

Section 108 of the *Telecommunications (Interception) Act 1979* (the Act) provides that the Governor-General may make Regulations for the purposes of the Act.

The *Telecommunications (Interception) Legislation Amendment Act 2000* (the amending legislation) made a number of amendments to the Act. The amending legislation received Royal Assent on 22 June 2000. However, provisions of the amending legislation providing for named person warrants could not take effect until appropriate regulations were put in place. The Regulations prescribe new forms of warrant to authorise interception of telecommunication services as a result of the amending legislation.

The amending legislation had its origins partly in the Telecommunications Interception Policy Review that was tabled in Parliament on 25 August 1999 and partly in practical operational difficulties arising out of rapid changes in the telecommunications industry.

Schedule 2 of the amending legislation created a new form of interception warrant, the named person warrant. A named person warrant authorises the interception of any telecommunications service that the person named on the warrant uses, or is likely to use, during the currency of the warrant. Section 45A permits the issue of a named person warrant in relation to a class 1 offence. A class one offence is defined in the Act as murder, or an offence equivalent to murder, kidnapping or an offence equivalent to kidnapping, a narcotics offence either directly or indirectly participating in, assisting or encourage the commission of one of these offences. Section 46A permits the issue of named person warrants in relation to a class 2 offence. Section 5D of the Act defines a class 2 offence as an offence punishable by imprisonment for life or for a period of at least 7 years and that the offence does, or may, result in serious consequences including loss of life or serious personal injury. The Regulations prescribe templates for the new category of interception warrants issued under sections 45A and 46A of the Act.

Schedule 3 of the amending legislation made a number of miscellaneous and consequential amendments to the Act. Item 42 of Schedule 3 repealed subsection 55(2) of the Act to remove the requirement for the Australian Federal Police to execute a warrant issued under section 48 of the Act. Section 48 warrants authorise entry on premises to effect an interception.

Sub-regulation 3(5) previously prescribed a form of warrant that only permitted members of the Australian Federal Police to execute warrants under section 48 of the Act. The Regulations replaced references to the Australian Federal Police with references to an "agency". An agency means a law enforcement agency which has been declared by the Attorney-General to be an intercepting agency.

Details of the Regulations are attached.

The Regulations commenced on gazettal.

Attachment A

Details of the proposed Regulations are as follows:

Item 1 names the Regulations as the Telecommunications (Interception) Amendment Regulations 2000.

Item 2 provides that the Regulations commence on gazettal.

Item 3 notes that Schedule 1 of the amending regulations amends the existing Telecommunications (Interception) Regulations.

Schedule 1

Item 1 of Schedule 1 names the Regulations as the Telecommunications (Interception) Regulations 1987.

Item 2 of Schedule 1 amends Regulation 3 to include references to section 45A and section 46A warrants.

Item 3 of Schedule 1 substitutes the existing heading of Schedule 3 of the Regulations to now read 'Warrant under section 45 for the interception of communications'.

Item 4 of Schedule 1 inserts a new schedule - Schedule 3A - into the Regulations. Schedule 3A provides the form for named person warrants under section 45A of the Act.

Item 5 of Schedule 1 substitutes the existing heading of Schedule 4 of the Regulations to now read 'Warrant under section 46 for the interception of communications'.

Item 6 of Schedule 1 inserts a new schedule - Schedule 4A - into the Regulations. Schedule 4A provides the form for named person warrants under section 46A of the Act.

Item 7 of Schedule 1 replaces the reference to "Members of the Australian Federal Police" with "The *officers/*staff members (*or as the case may be*)".

Item 8 of Schedule 1 replaces the reference to "members of the Australian Federal Police" with "the *officers/* staff members (*or as the case may be*)".