

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 237**

Issued by the authority of the Attorney-General

*Telecommunications (Interception and Access) Act 1979*

*Telecommunications (Interception and Access) Amendment Regulation 2007 (No. 1)*

Section 300 of the *Telecommunications (Interception and Access) Act 1979* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The Act prohibits the interception of telecommunications, except in specified circumstances. In particular, the Act provides for the issue of warrants authorising the interception of telecommunications.

Interception warrants can relate to a specific service (a service warrant issued under section 46 of the Act) or to all communications made by a particular person (a named person warrant issued under section 46A of the Act).

All warrants issued under the Act must be issued in accordance with the prescribed forms set out in the *Telecommunications (Interception and Access) Regulations 1987* (the Principal Regulations). There was one prescribed form for issuing service warrants under section 46 of the Act and one prescribed form for issuing named person warrants under section 46A of the Act.

The Regulations amend the Principal Regulations to provide one prescribed form for each type of warrant that can be issued pursuant to section 46 of the Act and one prescribed form for each type of warrant that can be issued pursuant to section 46A of the Act. Four forms will replace the current two.

A service warrant can authorise the interception of telecommunications to or from a service used or likely to be used by a person of interest. Alternatively, a service warrant can authorise the interception of telecommunications to or from a service used or likely to be used a person not under investigation but known to communicate with the person of interest in certain circumstances (a B-Party warrant).

A named person warrant can authorise the interception of any telecommunications services used or likely to be used by a person of interest. Alternatively, a named person warrant can authorise the interception of communications to or from any telecommunications devices used or likely to be used by a person of interest.

In particular, the Regulations amend the Principal Regulations to provide:

- a prescribed form for a service warrant which authorises the interception of a single telecommunications service;
- a prescribed form for a service warrant in relation to a B-Party, which authorises the interception of a single telecommunications service of a person who is not suspected of being involved in a serious offence but who communicates with a person of interest;
- a prescribed form for a named person warrant in relation to services which authorises the interception of any service a named person is using or is likely to use; and
- a prescribed form for a named person warrant in relation to devices which authorises the interception of communications to or from any telecommunications device that the named person is using or is likely to use.

It is important to note that the amendments would not make any substantial changes to the existing forms. The purpose of the amendments was to simplify the choice of the correct prescribed form for warrants issued under sections 46 and 46A of the Act.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and commenced on 20 August 2007.

The amendments were developed in consultation with the Director of Public Prosecutions. Agencies which have the power to apply for telecommunications interception warrants have been advised of the changes affected by the Regulations.

Details of the Regulations are as follows:

#### Regulation 1 – Name of Regulations

Regulation 1 provides that these Regulations are the *Telecommunications (Interception and Access) Amendment Regulations 2007 (No. 1)*.

#### Regulation 2 – Commencement

Regulation 2 provides that the Regulations commence on 20 August 2007.

#### Regulation 3 – Amendment of the *Telecommunications (Interception and Access) Regulations 1987*

Regulation 3 provides that Schedule 1 amends the *Telecommunications (Interception and Access) Regulations 1987*.

### **Schedule 1 – Amendments**

#### **Item [1] Regulation 3**

Amends regulation 3 to the Principal Regulations to provide that each of the forms contained Schedule 3 of the Principal Regulations is prescribed for the purposes of subsection 49(1) of the Act. The amendment would ensure that one form is prescribed for each interception warrant that can be issued under the Act.

#### **Item [2] Schedule 3, Forms 3 and 4**

Substitutes existing Forms 3 and 4 of the Principal Regulations with new Forms 1, 2, 3 and 4. The amendment provides different forms for each different type of warrant that can be obtained under sections 46 and 46A of the Act.

Form 1 is the form prescribed for a service warrant which authorises the interception of a telecommunications service used or likely to be used by the person of interest.

Form 2 is the form prescribed for a service warrant authorising the interception of a telecommunications service used or likely to be used by a person likely to communicate with the person of interest.

Form 3 is the form prescribed for a named person warrant authorising the interception of any telecommunications service used or likely to be used by the person of interest.

Form 4 is the form prescribed for a named person warrant authorising the interception of any communications made by means of a telecommunications device used or likely to be used by the person of interest.