

NOTES ON CLAUSESTELECOMMUNICATIONS (INTERCEPTION) BILL 1979

## PART I PRELIMINARY

- Clause 1: This states the short title of the Act.
- Clause 2: Because this Bill is parallel legislation to the Australian Security Intelligence Organization Bill 1979, it is necessary for the 2 Bills to come into operation on the same day.
- Clause 3: After repealing the Telephonic Communications (Interception) Act 1960, this clause preserves warrants in force under that Act at the date of repeal as if issued under this Bill.
- Clause 4: By this clause, the Crown in all its aspects in Australia is bound by the terms of the Bill.
- Clause 5: This clause contains definitions of terms used in the Bill. Those requiring special comment are:
- . 'narcotics offence': section 235 of the Customs Act referred to in the definition deals with the punishments applicable to offences concerning narcotic goods; accordingly, the term 'narcotic offences' means in effect offences in relation to narcotic goods.
  - . 'officer of Customs': an officer of Customs for the purposes of the Customs Act is a person:
    - (a) employed in the service of the Customs; or
    - (b) authorized in writing by the Minister to perform the functions of an officer of Customs.
  - . 'officer of the Commission': the purpose of the definition is to ensure that the term applies not only to officers and employees of the Australian Telecommunication Commission but also to officers and employees of the Australian Postal Commission who are doing acts on behalf of the Australian Telecommunication Commission under arrangements made between the 2 Commissions, such as acceptance at a Post Office of messages for transmission as telegrams; it also applies to persons such as unofficial

postmasters performing like services.

'telecommunication service': the term is defined in section 3 of the Telecommunications Act 1975 to mean:

- (a) a service for transmitting, by means of electric or electro-magnetic energy -
- (i) sounds, including speech and music;
  - (ii) visual images;
  - (iii) signals for the communication, whether as between persons and persons, things and things or persons and things, of any matter otherwise than in the form of sounds or visual images; or
  - (iv) a service for receiving any such sounds, images or signals that have been transmitted by means of electric or electro-magnetic energy.'

The effect of the definition in the present Bill is that it applies to telecommunication services as defined in the Telecommunications Act that are provided or used by, or used with, the authority of the Commission and includes private lines and the like which may not be connected to the Commission's exchanges.

Sub-clause (2) deals with the circumstances where the Commission supplies a telecommunication service to a person other than as a subscriber in the ordinary sense and deems the Commission for the purposes of the Bill to be the subscriber to that service.

Sub-clause (3) in paragraphs (a) and (b) indicates the meanings to be given to the phrases 'narcotic inquiries that are being made by officers of Customs' and 'narcotic inquiries that have been made by officers of Customs'. Paragraph (c) deems a reference to a telegram to include the material record held by the Commission of the transmitted message.

Sub-clause (4) will permit the Attorney-General to authorize a Minister to perform the functions of the Attorney-General under the Bill when the Attorney-General is not available.

Clause 6: This defines the meaning of interception.

PART II INTERCEPTION AND TELECOMMUNICATIONS AND TELEGRAMS

Clause 7: Sub-clause (1) prohibits the interception of a communication passing over a telecommunications system. Exemptions from this prohibition are set out in sub-clause (2) being:

- (a) acts done by an officer of the Commission in the course of installing a line or equipment or identifying or tracing persons contravening the Telecommunication Act 1975 or regulations or by-laws thereunder; or
- (b) interception pursuant to a warrant.

Sub-clause (4) prohibits the divulging of information obtained by interception except in the performance of the Organization's functions, for the purposes of narcotic inquiries or in the performance of duties as an officer of the Telecommunications Commission.

Sub-clause (5) recognizes that, in the course of an authorized interception, information may be acquired that may be relevant to another law enforcement agency. Thus, both the Director-General of Security and the Comptroller-General of Customs, where the information relates to the commission or intended commission of an offence punishable by not less than 3 years' imprisonment, will be empowered to communicate the information to the police. The Director-General may communicate information relating to a narcotic offence to Customs and the Comptroller-General may communicate information relating to activities prejudicial to security to the Director-General. Where the information concerns matters outside Australia and the Director-General is satisfied that the national interest requires the communication, he may communicate it to a Minister or Department or to the Office of National

Assessments. Paragraph 7(5)(c) deals with communication by a police officer to another police officer of the information received under this provision.

Sub-clause (6) limits the use that can be made in legal proceedings of the information so obtained.

Sub-clause (7) deals with the prosecution of offences against this clause.

Clause 8: This clause makes it unlawful for officers of the Organization or Customs to seek access to telegrams or for officers of the Telecommunications Commission to provide such access except pursuant to a warrant under this Bill and it imposes a duty on the Director-General and Comptroller-General to take reasonable steps to ensure non-contravention of this provision.

PART III WARRANTS AUTHORIZING THE ORGANIZATION TO INTERCEPT TELECOMMUNICATIONS AND TELEGRAMS

Clause 9: This clause empowers the Attorney-General, when he is requested by the Director-General and is satisfied that a telecommunications service is being used by a person engaged in activities prejudicial to security and interception by the Organization will assist it in its proper functions, to authorize interception of communications from the service subject to any conditions or restrictions specified in the warrant.

Sub-clause (2) requires that the request by the Director-General shall identify the service and specify the facts and other grounds supporting the request. Under sub-section (4), a warrant authorizing entry on premises shall state whether the entry should be made by day or night and whether permission should first be sought:

Sub-clauses (5) and (6) deal with the period of the warrant and provide for the re-issue of warrants.

Clause 10: This clause provides on a basis similar to that provided in the existing Act for the issue in emergency circumstances subject to restrictions specified in the clause of warrants by the Director-General authorizing interception of communications to or from a telecommunications service. The restrictions are:

- . the Attorney-General has not made a decision in respect of the Director-General's request for a warrant nor, within the preceding 3 months, refused to issue a warrant in respect of the service in question.
- . the Director-General has not within the preceding 3 months issued an earlier warrant in respect of that service.
- . the Director-General is satisfied that the facts would justify the issue of a warrant by the Attorney-General and that, if interception does not commence before the Attorney-General's warrant is available, security will be, or is likely to be, seriously prejudiced.
- . the warrant may not be in force more than 48 hours and may be revoked by the Attorney-General.
- . a copy of the warrant and a statement of the grounds must be furnished to the Attorney-General.

Clause 11: This clause deals with the inspection of telegrams by ASIO. Regard must be had to the definitions of terms used in this clause contained in sub-clause (10). The clause empowers the Attorney-General to issue a warrant authorizing the Telecommunications Commission to inspect and make copies of telegrams lodged by a person at a specified telegraph office, or addressed to, or intended to be received by, that person at a specified place and to furnish copies to the Director-General. The Attorney-General must, however, be satisfied that the person is engaged in, or is reasonably suspected by the Director-General, of being engaged

in activities prejudicial to security and the Organization needs access to such telegrams to assist it in carrying out its functions.

Sub-clause (2) provides for issue of warrants by the Director-General in emergency circumstances subject to restrictions specified in this clause similar to those provided under clause 10. The effect of sub-clause (8) is that, while a warrant under this clause is issued to the Commission, its authority may only be exercised by the Managing Director of the Commission or an approved officer.

Clause 12: This clause provides for officers of the Organization to be approved to exercise the authority conferred by a warrant issued under clauses 9 or 10.

Clause 13: This clause places an obligation on the Director-General to inform the Attorney-General and discontinue further interception when the grounds on which a warrant was issued have ceased to exist.

Clause 14: This clause imposes a duty on the Director-General to destroy any record or copy of an intercepted communication when satisfied that the material is not required for the performance of the functions or the exercise of the powers of the Organization.

Clause 15: This clause requires the Attorney-General and the Director-General when they issue or revoke a warrant under the Act to inform, amongst other persons, the Managing Director of the Telecommunications Commission and give him a certified copy of the warrant. The Director-General is required to retain all warrants issued by him and all warrants and instruments of revocation received from the Attorney-General and all requests and other documents returned by the Attorney-General. The Managing Director

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of the Telecommunications Commission is likewise required to retain all warrants, instruments of revocation and copies thereof received by him from the Attorney-General and the Director-General.

Clause 16: This clause provides for an offence of obstructing or hindering a person acting in pursuance of a warrant granted to them under sections 9, 10 and 11 of the Act.

Clause 17: This clause requires that the Attorney-General receive within 3 months a report from the Director-General on the results of interception under each warrant.

PART IV - WARRANTS AUTHORISING THE CUSTOMS TO INTERCEPT  
TELECOMMUNICATIONS AND TELEGRAMS

Clause 18: For the purposes of this Part the term 'Judge' is defined by reference to Judges of State and Territory Supreme Courts and the Federal Court.

Clause 19: This clause provides that the Governor-General may make arrangements with the States and the Northern Territory for all or some of their Supreme Court Judges to be vested with the powers under Part IV.

Clause 20: Under this clause, a Judge is authorized to issue a warrant authorizing interception of a telecommunication service for the purposes of narcotic inquiries. The Judge must be satisfied by information on oath that there are reasonable grounds for suspecting that the service is being used by a person who has committed or is suspected of having committed or of being likely to commit a narcotics offence and that the interception will assist officers in their inquiries in relation to the matter.

Sub-clause (2) authorizes a Judge to grant a warrant in respect of a telecommunication service anywhere in Australia. By sub-clause (3) the information furnished to the Judge shall

include the facts and other grounds to which the applicant considers it necessary that the warrant should be issued.

Clause 21: This clause provides for a Judge to authorize an officer of Customs to intercept telegrams upon grounds similar to those which are set out in clause 20. The warrant will authorize the Telecommunications Commission to inspect and make copies of telegrams lodged by a person at a specified telegraph office, or address to, or intended to be received by, that person at a specified place and to furnish copies to the Comptroller-General.

Clause 22: This clause provides for officers of Customs to be approved to exercise the authority conferred by a warrant issued under Clause 20.

Clause 23: This clause requires the Comptroller-General of Customs to discontinue interception and revoke the warrant when the grounds on which a warrant was issued have ceased to exist.

Clause 24: This clause imposes a duty on the Comptroller-General of Customs to destroy any record of an intercepted communication when satisfied that the material will not assist in narcotics inquiries.

Clause 25: This clause requires the Comptroller-General when a warrant is issued under Clauses 20 or 21 or when a warrant so issued is revoked to inform, amongst other persons, the Managing-Director of the Telecommunications Commission. The Comptroller-General is required to retain all warrants and instruments of revocation relating to warrants under Clauses 20 and 21.

Clause 26: This clause provides for an offence of obstructing or hindering of a person acting in pursuance of a warrant granted under clauses 20 and 21 of the Bill.

Clause 27: This clause requires that the Minister receive from the Comptroller-General copies of warrants and instruments of revocation and, within three months after the expiration or revocation of each warrant, a report on the results of the interception.

Clause 28: This clause provides for regulations to prescribe the form of warrant to be issued by a Judge.