



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 44 2003–04

Telecommunications Interception and Other Legislation Amendment Bill 2003

ISSN 1328-8091

© Copyright Commonwealth of Australia 2003

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database.

On the Internet the Department of the Parliamentary Library can be found at:

<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2003

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 44 2003–04

Telecommunications Interception and Other Legislation
Amendment Bill 2003

Peter Prince
Law and Bills Digest Group
3 October 2003

Contents

Purpose.	1
Background.	1
Telecommunications Interception.	1
Types of Interception Warrants	1
Executing interception warrants	2
New 'Class 2' Offences	3
Aggravated People Smuggling.	3
Slavery, Sexual Servitude and Deceptive Recruiting	3
Number of Interception Warrants.	4
Western Australian Corruption and Crime Commission.	5
Main Provisions	7
Additional 'Class 2' Offences	7
Powers for WA Corruption and Crime Commission	7
Schedule 1	7
Assumed Identities	7
Financial Transaction Information	8
Telecommunications Interception	8
Concluding Comments.	9
New Commonwealth Offences.	9
Use of Interception Information by CCC.	9
Endnotes.	10

Telecommunications Interception and Other Legislation Amendment Bill 2003

Date Introduced: 18 September 2003

House: House of Representatives

Portfolio: Attorney-General

Commencement: Schedule 1 commences on a date to be fixed by Proclamation, but will be repealed if this does not occur within 12 months of Royal Assent. Schedule 2 commences on Royal Assent.

Purpose

To amend:

- the *Telecommunications (Interception) Act 1979* to include slavery, sexual servitude, deceptive recruiting and aggravated people smuggling as offences in relation to which a telecommunications interception warrant may be sought, and
- the Telecommunications (Interception) Act, the *Financial Transactions Reports Act 1988* and the *Crimes Act 1914* to provide the proposed new Western Australian Corruption and Crime Commission with relevant law enforcement powers.

Background

Telecommunications Interception

The Telecommunications (Interception) Act prohibits interception of 'a communication passing over a telecommunications system' except where this is necessary for the operation or maintenance of such a system or pursuant to an interception warrant.¹

Types of Interception Warrants

Interception warrants can be issued for national security or law enforcement purposes.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Law enforcement warrants can be obtained by Federal and State police and other government crime investigation bodies. Applications for such warrants must be made to an 'eligible judge' or nominated member of the Administrative Appeals Tribunal.²

'Telecommunications service warrants' relate to a particular identified telecommunications service.³ 'Named person warrants' apply to any telecommunication service that is used or likely to be used by a named individual.⁴

An application for either type of interception warrant can include a request that the warrant authorise entry on to specified premises.

Interception warrants can only be issued for the investigation of 'class 1' and 'class 2' offences. Class 1 offences include murder, acts of terrorism, kidnapping and narcotics offences.⁵ Class 2 offences include offences punishable by imprisonment for life or a period of at least 7 years where the offender's conduct involves loss of life, serious personal injury, drug trafficking or serious fraud, bribery or corruption etc.⁶

Before issuing either a 'class 1' or 'class 2' interception warrant, the judge or AAT member must consider whether sufficient information could be obtained by alternative methods. In the case of an interception warrant relating to a class 2 offence, however, the judge or AAT member must also take into account the extent to which the privacy of any person or persons would be interfered with, as well as the gravity of the conduct constituting the offence being investigated.⁷

Additional information must be supplied before a warrant can authorise entry on to premises.⁸

Executing interception warrants

The following crime investigation bodies can apply for and execute interception warrants for the purpose of law enforcement:⁹

- the Australian Federal Police,
- the Australian Crime Commission, and
- an 'eligible authority'¹⁰ of a State or the Northern Territory which is declared to be an 'agency' by the Attorney-General.¹¹ As at 30 June 2002, declarations were in force for the Victorian, NSW, South Australian and Western Australian police services; the New South Wales Crime Commission, Independent Commission Against Corruption and Police Integrity Commission; and the Western Australian Anti-Corruption Commission.¹²

Declarations by the Attorney-General are disallowable instruments under the Telecommunications (Interception) Act.¹³

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Other 'eligible authorities' that are not declared 'agencies' may have access to intercepted information obtained by 'agencies' where this is relevant to their investigations.

New 'Class 2' Offences

Aggravated People Smuggling

The Bill adds the offence of 'aggravated people smuggling' to the list of 'class 2 offences' for which crime investigation agencies can obtain an interception warrant in accordance with the Telecommunications (Interception) Act.

The offences of 'people smuggling' and 'aggravated people smuggling' were created by the *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking And Other Measures) Act 2002*, the relevant parts of which came into force in January 2003.

The new offences apply to the smuggling of people into a foreign country (whether or not via Australia), whereas previous offences of this type in the *Migration Act 1958* applied only to the smuggling of people into Australia.

An offence of 'people smuggling' is committed when a person organises the illegal entry of another person into a foreign country for a 'benefit.' The maximum penalty is 10 years imprisonment or 1,000 penalty units, or both.¹⁴

The 'aggravated offence of people smuggling' is committed where a person commits an offence of people smuggling which:

- involves an intention that the victim of the people smuggling operation will be exploited after entry to the foreign country
- subjects the victim to cruel, inhuman or degrading treatment, or
- results in a danger of death or serious harm to the victim.

The maximum penalty for this aggravated offence is 20 years imprisonment or a fine of 2,000 penalty units, or both.¹⁵

For full background on the new people smuggling offences, see [Bills Digest No. 84 of 2002-03](#).¹⁶

Slavery, Sexual Servitude and Deceptive Recruiting

The Bill also provides that offences under Division 270 of the *Criminal Code Act 1995* are 'class 2 offences' for the purpose of the Telecommunications (Interception) Act.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The Criminal Code Amendment (Slavery And Sexual Servitude) Act 1999 (which came into force in September 1999) inserted Chapter 8 ('Offences against humanity') into the Criminal Code. Division 270 of Chapter 8 added the offences of 'slavery', 'sexual servitude' and 'deceptive recruiting for sexual services' to the Code.

The offence of 'slavery' occurs when a person intentionally possesses a slave or engages in slave trading – irrespective of whether the person engages in that conduct inside or outside Australia. The maximum penalty is 25 years imprisonment. 'Slave trading' is defined to include capturing a person in order to make them a slave, purchasing or selling slaves, commercial transactions involving slaves and directing or financing such activities.¹⁷

'Sexual servitude' occurs when a person provides sexual services and, because of force or threats, is not free to cease providing those services or leave the place where they provide those services. 'Threat' includes a threat to cause a person's deportation. A person who intentionally or recklessly causes a person to enter or remain in sexual servitude is guilty of an offence. The maximum penalty in the case of an aggravated offence is 19 years imprisonment. In any other case the maximum penalty is 15 years imprisonment.¹⁸

The offence of 'deceptive recruiting for sexual services' is committed if a person deceives another person that an engagement will involve the provision of sexual services. The penalty is a maximum of 9 years imprisonment in the case of an aggravated offence and 7 years imprisonment in any other case.¹⁹

An offence will be an aggravated offence if committed against a person who is under 18 years of age.²⁰

For full background on offences under Division 270 of the Criminal Code, see [Bills Digest No. 167 of 1998-99](#).²¹

Number of Interception Warrants

The latest annual report on the Telecommunications (Interception) Act states that 2514 interception warrants were issued to law enforcement agencies during 2001-02, representing an increase of 17 per cent over the previous year.²²

The annual report noted that there was a 48 per cent increase in the number of prosecutions commenced and a 50 per cent increase in the number of convictions obtained on the basis of lawfully obtained information.²³

Commenting on these figures, the Attorney-General, the Hon. Daryl Williams MP, stated in June 2003 that:

The report shows that the use of telecommunications interception continues to be an important investigative tool which is demonstrating proven results. The figures

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

contained in the report show that access to this tool is vital for law enforcement particularly at a time of such rapid technological change and advancement.²⁴

In contrast, the *Sunday Tasmanian* remarked that:

Australians are fast becoming the most spied-on people in the Western world. Mail interceptions and telephone taps have soared...The 2514 court warrants for phone taps last financial year – almost double the number issued in the US – represent a tenfold increase in the past decade...The warrants apply to hundreds of thousands of individual phone calls and eavesdropping on thousands of people.²⁵

In relation to the previous annual report on the Telecommunications (Interception) Act, the then Shadow Minister for Justice and Customs, Daryl Melham MP, stated in September 2002 that 'It is a striking fact that Australian law enforcement agencies are resorting to telecommunications interception much more than their American counterparts'. Given the disparity in population between the two countries, 'this amounts to a per capita rate of telephone interception in Australia more than 20 times that in the United States.'²⁶

For further background on telecommunications interception, see [Bills Digest No. 121 of 2001-02](#).²⁷

Western Australian Corruption and Crime Commission

Western Australia's Corruption and Crime Commission Act 2003²⁸ will create a new Corruption and Crime Commission ('CCC'). Formation of the CCC was a key recommendation of the WA Royal Commission into Police Corruption in its [interim report](#)²⁹ presented in December 2002.

The CCC will be based on Queensland's Crime and Misconduct Commission. It will replace the WA Anti-Corruption Commission ('ACC'). The ACC was established in 1996 to investigate public sector corruption in Western Australia but was criticised for lacking the power to effectively tackle this issue. According to its chairman, the ACC 'was set up to fail'.³⁰

Commenting on the creation of the CCC, the *West Australian* noted in February 2003 that:

The ill-conceived political stunt which became WA's Anti-Corruption Commission is almost at an end. No one should mourn its passing. Instead, there should be relief that at last WA is being promised an organisation with real clout, able to root out corrupt police, public servants and organised criminals.³¹

The CCC 'will, in effect, be a standing royal commission'.³² Indeed, it is intended that it have all of the functions of the Police Royal Commission.³³ It will have power to gather information, obtain documents and other evidence, summon witnesses, enter and search public premises, conduct integrity tests, carry out covert operations, use assumed identities

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

and compel witnesses to give information. It will be able to conduct open hearings if this is in the public interest.

Attempts to obstruct CCC hearings – such as interfering with witnesses – will attract punishment of up to five years gaol and a \$100,000 fine.³⁴

The Corruption and Crime Commission Act also creates the position of Parliamentary Inspector, whose function will be to audit the operations of the CCC and investigate and report allegations of misconduct by the CCC or its officers.³⁵

Schedule 1 of the current Bill before the Federal Parliament will amend the following Commonwealth Acts:

- the *Crimes Act 1914* to allow the CCC to authorise use of assumed identities
- the *Financial Transaction Reports Act 1988* to give the CCC access to financial transaction reports from the Australian Transaction Reports and Analysis Centre ('AUSTRAC'), and
- the *Telecommunications (Interception) Act 1979* to enable the CCC and the Parliamentary Inspector to receive intercepted information relevant to their functions, and to allow the CCC to apply for and execute interception warrants in its own right.

According to the Second Reading Speech for the Bill, these amendments will provide the CCC with powers consistent with those of the ACC.³⁶

The *West Australian* reported in April 2003 that after being given 'bugging powers' in September 2001, the ACC executed 45 telephone interception warrants in the second half of 2002, involving the interception of 61,599 phone calls.³⁷

The Federal Government expects that the CCC will be declared an 'agency' under the Telecommunications (Interception) Act allowing it to apply for and execute interception warrants. The Western Australian Government must apply for 'agency' status on the CCC's behalf and satisfy the Attorney-General that the CCC has appropriate accountability and record-keeping arrangements in place.³⁸

It is not anticipated that the Parliamentary Inspector will be declared an interception agency in its own right. Instead it will 'receive intercepted information in connection with its functions in relation to misconduct.'³⁹

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Main Provisions

Additional 'Class 2' Offences

Schedule 2 Item 1 amends the definition of 'class 2 offence' in **subsection 5D(3)** of the Telecommunications (Interception) Act to include offences against **section 73.2** and **Division 270** of the **Criminal Code**.

This amendment will allow law enforcement bodies declared as 'agencies' under the Telecommunications (Interception) Act to apply for and execute interception warrants for investigating the new Commonwealth offences of 'aggravated people smuggling', 'slavery', 'sexual servitude' and 'deceptive recruiting for sexual services.'

Powers for WA Corruption and Crime Commission

Schedule 1 of the Bill amends various Commonwealth Acts to confer relevant powers on the CCC and the Parliamentary Inspector.

Since the Western Australian Parliament is still considering the final form of the CCC and its oversight by the Parliamentary Inspector,⁴⁰ **Item 2** of the table in **clause 2** proposes that **Schedule 1** should not commence until a day fixed by Proclamation. As the *Explanatory Memorandum* to the Bill notes:

Commencement of the amendments in Schedule 1 by proclamation will ensure that those provisions providing for the Commission and Parliamentary Inspector do not commence until those entities are formally constituted.⁴¹

Item 2 of the table further provides that **Schedule 1** will automatically be repealed if the CCC and the Parliamentary Inspector are not formally created within 12 months after the Bill receives Royal Assent.

Schedule 1

Assumed Identities

Item 1 of Schedule 1 includes the CCC in the definition of 'State or Territory participating agency' in **subsection 15XA(1)** of the **Crimes Act**. This means that officers of the CCC will be able – in accordance with **section 15XH** of the Crimes Act – to authorise persons to use an assumed identity or to acquire evidence of an assumed identity from any Commonwealth agency. Persons authorised to engage in such activities will receive indemnity and protection from prosecution under **sections 15XD and 15XC** of the Crimes Act.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Financial Transaction Information

Items 2 and 3 of Schedule 1 amend **section 27** of the **Financial Transaction Reports Act** to enable the CCC and its officers to receive 'FTR information'. 'FTR information' is the range of information on financial transactions obtained by the Director of AUSTRAC under Part II of the Financial Transaction Reports Act.

Telecommunications Interception

Schedule 1 amends the **Telecommunications (Interception) Act** to enable the CCC and the Parliamentary Inspector to receive information obtained from telecommunications interceptions.

Item 8 includes the CCC and the Parliamentary Inspector within the definition of 'eligible authority' in **subsection 5(1)**. This brings the two bodies within the scope of **Part VII** of the Act covering use of information acquired from telecommunications interceptions.

Item 13 amends the definition of 'permitted purpose' – for which interception information can be used – in **subsection 5(1)** of the Act to include investigations by the CCC and the Parliamentary Inspector into 'misconduct'. This means the two bodies will be able to use interception information not only to investigate serious criminal offences but also to enquire into 'misconduct' (as defined in the Corruption and Crime Commission Bill)⁴² which may not constitute a serious offence. In addition, under **proposed paragraph 5(1)(g)**, the CCC will also be permitted to use interception information to investigate whether 'misconduct...is or may be about to occur, or is likely to occur'.

Item 16 amends **section 5B** to enable lawfully obtained interception information to be used as evidence in proceedings of the CCC and Parliamentary Commissioner.

Item 17 amends **paragraph 6A(1)(c)** by adding the CCC and the Parliamentary Inspector to the list of agencies permitted to use interception information for the investigation of criminal offences.

Item 20 amends **section 68** to allow an agency with interception information relating to matters that may give rise to investigations by the CCC or the Parliamentary Inspector to pass such information to those bodies.

Schedule 1 also amends the **Telecommunications (Interception) Act** to enable the CCC to apply for and execute interception warrants in its own right.

Item 19 amends **paragraph 39(2)** of the Act to enable an officer of the CCC (once that body is declared an interception 'agency') to apply to an eligible judge or nominated member of the Administrative Appeals Tribunal for an interception warrant.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Item 4 adds the Commissioner and senior executive officer(s) of the CCC to the definition of 'certifying officer' in **subsection 5(1)** of the Act, enabling them to perform certain functions under the Act including revoking interception warrants⁴³ and providing evidentiary certificates as to actions taken in relation to warrants.⁴⁴

Concluding Comments

New Commonwealth Offences

The amendments proposed in the Bill to the definition of 'class 2 offences' in the Telecommunications (Interception) Act will allow interception warrants to be obtained for investigation of new offences (aggravated people smuggling, slavery, sexual servitude and deceptive recruiting for sexual services) recently included in the Criminal Code.

However, by specifying offences against the *Commonwealth* Criminal Code, the Bill may prevent interception warrants being obtained for investigation of similar *State* and *Territory* offences.

Sexual servitude and deceptive recruiting for sexual services only contravene Commonwealth law where there is an overseas element to the offence.⁴⁵ State and Territory legislation must be used to prosecute offenders where all the conduct occurs within Australia.

Sexual servitude and related offences are covered by legislation in South Australia, ACT, NSW and the Northern Territory.⁴⁶ The amendments proposed in the current Bill would not permit State and Territory police forces or other agencies to obtain an interception warrant to investigate such offences.

Use of Interception Information by CCC

Under the proposed legislation the CCC can obtain an interception warrant only for investigation of 'class 1' or 'class 2' offences, but will be able to use interception information from such warrants (or forwarded by other agencies) for investigating lesser offences, including 'misconduct'.

This allows broader use of interception information than the ACC is permitted,⁴⁷ but is consistent with powers given to other Australian crime investigation bodies.⁴⁸ The Australian Federal Police, for example, can use interception information for 'an investigation of, or an inquiry into, alleged misbehaviour, or alleged improper conduct, of an officer of the Commonwealth'.⁴⁹ State police forces are given a similar power.

However the CCC will also be permitted to use interception information to investigate whether 'misconduct...*is or may be about to occur, or is likely to occur*'. This suggests use

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

of interception information for a monitoring function that appears to go further than the existing power of State and Federal police forces to use such information in relation to *alleged* misbehaviour or improper conduct.

Endnotes

- 1 Telecommunications (Interception) Act section 7.
- 2 Telecommunications (Interception) Act sections 6D and 6DA.
- 3 Telecommunications (Interception) Act sections 9, 11A, 45, 46, 48.
- 4 Telecommunications (Interception) Act sections 9A, 11B, 45A, 46A.
- 5 Telecommunications (Interception) Act section 5.
- 6 Telecommunications (Interception) Act section 5D.
- 7 Telecommunications (Interception) Act sections 46 and 46A.
- 8 Telecommunications (Interception) Act section 48.
- 9 Telecommunications (Interception) Act Section 39. See the definition of 'agency' in section 5.
- 10 Section 5 of the Telecommunications (Interception) Act currently defines 'eligible authority' as the police forces of each of the States and of the Northern Territory; the New South Wales Independent Commission Against Corruption, Crime Commission, Police Integrity Commission and Inspector of the Integrity Commission; the Western Australian Anti-Corruption Commission and the Royal Commission into Police Corruption; and the Queensland Crime and Misconduct Commission.
- 11 Telecommunications (Interception) Act sections 34 and 35. Section 35 sets out the prerequisites for a Ministerial declaration.
- 12 *Telecommunications (Interception) Act 1979 Report for the Year Ending 30 June 2002*, p. 4.
- 13 Section 36.
- 14 *Criminal Code Act 1995*, section 73.1.
- 15 Criminal Code section 73.2.
- 16 <http://www.aph.gov.au/library/pubs/bd/2002-03/03bd084.htm>.
- 17 Criminal Code sections 270.1 – 270.3.
- 18 Criminal Code sections 270.4 – 270.6.
- 19 Criminal Code section 270.7.
- 20 Criminal Code section 270.8.
- 21 <http://www.aph.gov.au/library/pubs/bd/1998-99/99bd167.htm>.
- 22 *Telecommunications (Interception) Act 1979 Report for the year ending 30 June 2002*, p. 13.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- 23 *Telecommunications (Interception) Act 1979 Report for the year ending 30 June 2002*, p. 30.
- 24 Hon. Daryl Williams AM QC MP, Press Release, 17 June 2003.
- 25 *Sunday Tasmanian*, 29 June 2003, p. 2.
- 26 Daryl Melham MP, News Release, 'More Telephone Taps in Australia than the United States', 15 September 2002.
- 27 <http://www.aph.gov.au/library/pubs/bd/2001-02/02bd121.pdf>.
- 28 Western Australia's Corruption and Crime Commission Act was assented to in interim form on 3 July 2003. Passage of the interim legislation was necessary to ensure continued statutory coverage for staff of the Royal Commission into Police Corruption. Both the interim Act and an amending bill containing substantive provisions have been referred to the WA Parliament's Standing Committee on Legislation for review. See WA Parliament's [website](http://www.parliament.wa.gov.au/parliament/bills.nsf/bills?OpenView&Start=1&Count=120&Expand=1) at <http://www.parliament.wa.gov.au/parliament/bills.nsf/bills?OpenView&Start=1&Count=120&Expand=1>; and WA Legislative Assembly Hansard, 26 June 2003, pp. 9454-56.
29. [http://police.royalcommission.wa.gov.au/publications/publications.nsf/DocByAgency/C02CE7AB831853FF48256CD80032D250/\\$file/Interim+Report.pdf](http://police.royalcommission.wa.gov.au/publications/publications.nsf/DocByAgency/C02CE7AB831853FF48256CD80032D250/$file/Interim+Report.pdf)
- 30 *The West Australian*, 27 February 2003, p. 18.
- 31 *ibid.*
- 32 *ibid.*
- 33 Corruption and Crime Commission Act, section 19.
- 34 Corruption and Crime Commission Act, Part 6.
- 35 Corruption and Crime Commission Act, Part 13.
- 36 Hon. Daryl Williams AM QC MP, Second Reading Speech, *House Hansard*, 18 September 2003, p. 19634.
- 37 *The West Australian*, 10 April 2003, p. 6.
- 38 Hon. Daryl Williams AM QC MP, Second Reading Speech, *House Hansard*, 18 September 2003, p. 19634.
- 39 *Explanatory Memorandum*, p. 4.
- 40 See note 26.
- 41 *Explanatory Memorandum*, p. 2.
- 42 Section 4 of the draft Corruption and Crime Commission Bill states that:
- 'Misconduct occurs if —
- (a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment;
- (b) a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person;

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- (c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment;
- (d) a public officer engages in conduct that —
 - (i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public body or public officer;
 - (ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;
 - (iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or
 - (iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or another person, and constitutes or could constitute —
- (v) an offence against the Statutory Corporations (Liability of Directors) Act 1996 or any other written law; or
- (vi) a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct); or
- (e) a public officer, whilst acting or purporting to act in his or her official capacity, engages in reviewable police action.

43 Telecommunications (Interception) Act section 57.

44 Telecommunications (Interception) Act section 61.

45 Criminal Code section 270.5.

46 *Criminal Law Consolidation Act 1935* (SA) sections 66 and 67; *Crimes Act* (NSW) Part 3 Division 10A; *Crimes Act 1900* (ACT) Part 5; *Criminal Code of the Northern Territory of Australia* (NT) Schedule 1, Division 6A. In addition, the WA Criminal Code Amendment Bill 2003 will amend the WA Criminal Code to create sexual servitude offences.

47 The ACC is limited to using interception information for investigating 'alleged corrupt conduct, criminal conduct, criminal involvement or serious improper conduct'. Telecommunications (Interception) Act section 5(1)

48 Telecommunications (Interception) Act section 5 (1).

49 *ibid.*

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.