



Telecommunications (Interception) Amendment (Stored Communications and Other Measures) Bill 2005

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Contents

Purpose.	2
Background.	2
Access to ‘stored communications’	2
Victorian Office of Police Integrity	3
Other State authorities	3
Main Provisions	3
Endnotes.	4

Telecommunications (Interception) Amendment (Stored Communications and Other Measures) Bill 2005

Date Introduced: 14 September 2005

House: House of Representatives

Portfolio: Attorney-General

Commencement: Royal Assent, except for the provisions affecting the Victorian Office of Police Integrity which will commence on a day to be fixed by Proclamation.

Purpose

The purpose of this Bill is to:

- extend for six months provisions allowing access to ‘stored communications’ without a warrant under the *Telecommunications (Interception) Act 1979* (Interception Act)
- add the Victorian Office of Police Integrity to the list of ‘eligible authorities’ able to obtain telecommunications interception warrants for law enforcement purposes, and
- allow various state bodies that are already ‘eligible authorities’ to make greater use of lawfully obtained intercepted material.

Background

Access to ‘stored communications’

The *Telecommunications (Interception) Amendment (Stored Communications) Act 2004*, assented to on 14 December 2004, excluded ‘stored communications’ (electronic messages located on a computer, internet server or other equipment) from controls on interception of communications in the *Telecommunications (Interception) Act 1979* (‘the TI Act’) for a period of 12 months while a review of the TI Act was conducted. In his second reading speech for the current Bill, the Attorney-General tabled a copy of the review — conducted by Tony Blunn AO and completed in August 2005 — stating that the Government needed additional time to fully consider its recommendations.

A discussion of the exclusion of stored communications from the interception warrant regime in the TI Act is contained in [Bills Digest No. 153 2003-04](#).¹ The [Blunn Review](#) is available on the Attorney-General’s website.² The Review recommends that comprehensive and over-riding legislation dealing with access to telecommunications data for security and law enforcement purposes be established.

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.

Victorian Office of Police Integrity

In September 2005 the Commonwealth and Victorian governments resolved a dispute over access by the Victorian Office of Police Integrity to telecommunications interceptions, including phone tap powers. The Office of Police Integrity was established in November 2004 by the Victorian Government to combat police corruption and serious misconduct. The Victorian Ombudsman, George Brouwer, was appointed to run the new body at the same time as continuing in his role as Ombudsman. The Federal Government refused to grant the new body telecommunications interception powers, arguing that Mr Brouwer would have a conflict of interest since one of his functions as Ombudsman is to oversee and investigate complaints about use of such powers.³

To resolve the dispute, Victoria has agreed to enact legislation to give a ‘special monitor’ authority over the Ombudsman. The current Bill provides interception powers to the Office of Police Integrity subject to enactment of this legislation. If the Victorian Government has not enacted this legislation within 12 months from the time the current Bill receives assent, the provisions granting interception powers to the Office of Police Integrity will automatically be repealed.

Other State authorities

Section 67 of the TI Act allows use of intercepted information only for ‘permitted purposes’. These ‘permitted purposes’ are set out in detail in section 5 and vary between the different Commonwealth and state agencies and bodies. For the NSW Independent Commission against Corruption (ICAC), for example, ‘permitted purposes’ include the investigation of serious criminal offences but there is no specific authority to use intercepts to investigate ‘corrupt conduct’. The Bill expands the range of ‘permitted purposes’ for which information from telecommunications interceptions can be used by ICAC, the Inspector of ICAC, the Inspector of the NSW Police Integrity Commission, and the Queensland Crime and Misconduct Commission.

Main Provisions

Schedule 1 Part 1 extends for a further six months the exemption of stored communications from the prohibition against interception of telecommunications without an interception warrant in section 7(1) of the TI Act and the restrictions on use and disclosure of intercepted material in Part VII of the Act. This means the exemption will continue until June 2006. The explanatory memorandum notes that ‘this will maintain the status quo pending consideration of the recommendations contained in the Blunn Review into the regulation of access to stored communications.’⁴

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Part 2 makes the Victorian Office of Police Integrity an ‘eligible authority’ under subsection 5(1) of the TI Act, allowing it to receive and use lawfully obtained intercepted material to investigate police misconduct. The explanatory memorandum notes that:

The amendments will only commence if the oversight arrangements for the Director, Police Integrity are appropriately amended within 12 months following Royal Assent. If the oversight arrangements are not changed to the satisfaction of the Australian Government, then the provisions will not be proclaimed and they will not commence.⁵

Part 3 enables a number of State anti-corruption agencies to make greater use of lawfully obtained intercepted material under the TI Act. **Items 25 and 26** provide that a ‘permitted purpose’ for use of lawfully obtained intercepted information under subsection 5(1) of the TI Act will include:

- in the case of ICAC, investigating whether corrupt conduct may have occurred
- in the case of the Inspector of ICAC, dealing with (by reports and recommendations) complaints of abuse of power, impropriety or maladministration by ICAC or its officers
- in the case of the Inspector of the NSW Police Integrity Commission, dealing with (by reports and recommendations) complaints of abuse of power, impropriety or other misconduct by the Commission or its officers, and
- in the case of the Queensland Crime and Misconduct Commission, investigating whether misconduct within the meaning of the *Queensland Crime and Misconduct Act 2001* may have occurred.

Endnotes

- 1 <http://www.aph.gov.au/library/pubs/bd/2003-04/04bd153.pdf>.
- 2 http://www.ag.gov.au/agd/WWW/agdHome.nsf/Page/Publications_2005_Report_of_the_Review_of_the_Regulation_of_Access_to_Communications_-_August_2005
- 3 Rachel Kleinman, ‘Deal ends phone tap stand-off’, *The Age*, 15.9.05, p. 6.
- 4 explanatory memorandum, p. 4.
- 5 *ibid.*, p. 5.

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