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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Attorney-General
the Hon. Lionel Bowen M.P.)

TELECOMMUNICATIONS (INTERCEPTION)

AMENDMENT BILL 1987

OUTLINE

The Bill amends the Telecommunications (Interception) Act 1979 for the following purposes:

- to extend the present interception powers of the Australian Federal Police under the Act (in relation to narcotics offences punishable under the Customs Act) to cover, in addition, Class 1 offences and Class 2 offences, which are defined to include murder, kidnapping and offences punishable for a maximum of 7 years or longer involving loss of life, serious personal injury or damage to property, trafficking in narcotic drugs, serious fraud or loss to the revenue;
- to enable State and Territory authorities to apply for the issue of a warrant authorising the interception by the Australian Federal Police of communications in relation to Class 1 offences and Class 2 offences; and
- to enable the National Crime Authority to apply for the issue of a warrant authorising the interception by the Australian Federal Police of communications in relation to Class 1 offences and Class 2 offences, as well as offences in relation to which the National Crime Authority is conducting a special investigation within the meaning of its Act.

The Bill gives effect to an agreement made by the Commonwealth Government at the Special Premiers' Conference on Drugs held in Canberra in 1985. The Bill also takes into account certain recommendations made by the Royal Commission of Inquiry into Alleged Telephone Interceptions (the Stewart Royal Commission) and recommendations contained in the report of the Joint Select Committee on Telecommunications Interception, tabled in Parliament in November 1986.

The Bill imposes stringent safeguards on the use of interception powers. Those safeguards include a requirement for judicial warrants, provisions for the auditing by an independent authority of interception activities and of compliance with State laws and the requirements of the Telecommunication (Interception) Act, and provisions regulating the use, disclosure and destruction of intercepted information. Information obtained in contravention of the Act will be inadmissible in evidence in any court, except for the purpose of establishing the contravention.

Statement of Financial Impact

The Bill requires any State or the Northern Territory, if it wishes its authority to be able to apply for the issue of a warrant authorising the interception of telecommunications, to enter into an agreement undertaking to pay the cost associated with the issue of warrants as well as the cost of all interceptions carried out by the Australian Federal Police in executing warrants issued to those authorities. The extension of the present interception powers of the Australian Federal Police and the proposed conferring of powers on the National Crime Authority will have financial implications. The amount involved will depend upon the number of interceptions carried out and it is therefore not possible to quantify the amount.

Clause 1 - Short title etc

1. Formal.

Clause 2 - Commencement

2. Clauses 1 (Short title) and 2 (Commencement) will come into operation on Royal Assent. The remaining clauses will come into operation on a day to be fixed by Proclamation. The delayed commencement will give time for the preparation of regulations prescribing forms of warrants.

Clause 3 - Repeal of section 3

3. Clause 3 repeals section 3 of the Telecommunications (Interception) Act 1979 ("the Principal Act"). The operation of section 3, in repealing the Telephonic Communications (Interception) Act 1960 and in making provision for warrants issued under that Act, is exhausted.

Clause 4 - Insertion of heading

4. Clause 4 amends the Principal Act by inserting after section 4 the heading "Part 1A - Interpretation". The new Part 1A will contain all definitions and interpretation provisions for the legislation.

Clause 5 - Interpretation

5. Clause 5 amends section 5 of the Principal Act by omitting the definitions of "Managing Director of the Commission" and "warrant" from sub-section 5(1), and sub-section 5(3). These provisions are replaced by new definitions.
6. Clause 5 also amends sub-section 5(1) by inserting a number of new definitions. The most important are:

- (1) 'agency' is defined, except in proposed Part VII of the Act, as a Commonwealth agency or an eligible authority of a State in relation to which a declaration under section 34 is in force and, in proposed Part VII, as a Commonwealth agency or an eligible authority of a State;
- (2) 'class 1 offence' is defined as:
 - . murder, or an equivalent offence;
 - . kidnapping, or an equivalent offence;
 - . a narcotics offence, which is defined in the Principal Act as an offence punishable as provided by section 235 of the Customs Act 1901;
 - . an offence constituted by aiding, abetting, counselling, procuring, being knowingly concerned in or party to the commission of, or conspiring to commit, an offence of the kind referred to above; and includes
 - . an offence in relation to which the National Crime Authority is conducting a special investigation within the meaning of its Act;
- (3) 'class 2 offence' is defined as:
 - . an offence punishable by imprisonment for life or for a maximum period of 7 years or longer which involves loss of a person's life, serious personal injury, or serious risk of such loss or injury; serious damage to property in circumstances endangering a person's safety; trafficking in narcotic drugs; serious fraud or loss to the revenue of the Commonwealth or of a State; or

- . an offence constituted by aiding, abetting, counselling, procuring, being knowingly concerned in or party to the commission of, or conspiring to commit, an offence of the kind referred to above.
- (4) 'eligible authority' is defined, in relation to a State, as - in any case - the Police Force of that State or - in the case of NSW - the State Drug Crime Commission of NSW;
- (5) 'Part VI warrant' is defined as a warrant issued or to be issued under proposed Part VI. Such warrants may be issued under proposed section 45 (warrants in relation to class 1 offences), 46 (warrants in relation to class 2 offences) or 48 (warrants for entry on premises).
- (6) 'permitted purpose' is defined, in relation to an agency or an eligible authority of a State, as a purpose connected with:
 - . in any case - an investigation by the agency or eligible authority of a prescribed offence; the making by an authority, body or person of a decision whether or not to begin a relevant proceeding in relation to the agency or eligible authority; a relevant proceeding in relation to the agency or eligible authority or the exercise by the chief officer of the agency or eligible authority of powers conferred by proposed section 69 (ie, the power to communicate information obtained by an agency);
 - . in the case of the Australian Federal Police or the Police Force of a State - an investigation of or an inquiry into alleged misbehaviour or alleged improper conduct of an officer of the Commonwealth or of that State, being an investigation or inquiry under a law of the Commonwealth or that State or by

- . a person in their capacity as an officer of the Commonwealth or that State, as the case requires; a report on such an investigation or inquiry; the tendering to the Governor-General or the Governor of that State of advice to terminate, because of misbehaviour or improper conduct, the appointment of an officer of the Commonwealth or that State; or deliberations of the relevant Executive Council in connection with advice to terminate, because of misbehaviour or improper conduct, the appointment of an officer of the Commonwealth or that State; or
- . in the case of an eligible authority of a State - an inspection of the authority's records being made under a requirement of the law of that State, being a requirement of the kind referred to in paragraph 35(1)(h); or a report on such inspection.
- (7) 'police disciplinary proceeding' is defined as a disciplinary proceeding before a tribunal or body that disciplines members of the Australian Federal Police and officers of State Police Forces, not being a proceeding by way of a prosecution for an offence.
- (8) "prescribed offence" is defined as: a serious offence, which is an offence that is or has been a class 1 or class 2 offence; an offence against sub-section 7(1) or section 63; an offence against section 86, 87, 88, 94 or 94A of the Telecommunications Act 1975; any other offence punishable by imprisonment for life or for a maximum period of 3 years or longer; or an ancillary offence relating to one of the above offences.
- (9) 'proceeding' is defined as:
 - . a proceeding or proposed proceeding in a federal court or State or Territory court;

- . a proceeding, hearing or proposed proceeding or hearing before a tribunal in Australia, or before any other body, authority or person in Australia having power to hear or examine evidence; or
- . an examination or proposed examination by or before such a tribunal, body, authority or person.

(10) "State" is defined to include the Northern Territory.

Clause 6 - Communicating etc certain information; Exempt proceedings; Information or question relevant to inspection by Ombudsman

7. Clause 6 inserts proposed 5A into the Principal Act, providing that a person who gives to another person, uses, records or produces in evidence a record of:

- (a) a communication that has been intercepted, whether or not in contravention of sub-section 7(1), which prohibits the interception of a communication; or
- (b) a telegram which has been copied under a warrant;

shall be taken to communicate to the other person, use, record or give in evidence so much of the information obtained by interception or by virtue of the warrant as can be derived from the record of the communication or telegram.

8. Clause 6 also inserts a proposed section 5B into the Principal Act, providing that a reference to an exempt proceeding is a reference to:

- (a) a proceeding by way of prosecution for a prescribed offence (qv);

- (b) a proceeding for the confiscation or forfeiture of property, or for the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence;
- (c) certain extradition proceedings and proceedings for the taking of evidence pursuant to the Extradition (Commonwealth Countries) Act 1966 or the Extradition (Foreign States) Act 1966 in so far as the proceedings relate to prescribed offences;
- (d) certain disciplinary proceedings against an officer of the Australian Federal Police or of the police force of a State or Territory; or
- (e) a proceeding against an officer of the Commonwealth, or of a State or Territory, for alleged misbehaviour or improper conduct, other than a prosecution for an offence.

9. Clause 6 also inserts a new section 5C into the Principal Act, providing that information or a question is relevant to an inspection under proposed Part VIII of an agency's records if the information or question is about:

- (a) in any case - the location, compilation or completeness of those records;
- (b) in any case - any matter to which those records relate; or
- (c) if the Ombudsman suspects on reasonable grounds that an officer of the agency has contravened the Act - any matter relating to the suspected contravention.

Clause 7 - Interception of a communication

10. Clause 7 amends section 6 of the Principal Act by inserting new sub-sections 6(3) and (4), which provide that where:

- (a) a communication is being intercepted by a member of the Australian Federal Police under a warrant issued under section 45 or 46 to another agency; and
- (b) while the communication is being intercepted, an officer of that other agency (being the person who applied for the warrant on the agency's behalf or who is authorised under sub-section 67(2) to receive information obtained by interceptions under warrants) listens to or records the communication as a result of action taken by the person entitled to exercise the authority conferred by the warrant, to enable the officer of the other agency to listen to or record communications intercepted under the warrant,

the listening or recording by the officer of that other agency does not constitute the interception of the communication but information obtained, and a record of the communication made, by that listening or recording shall be deemed to have been obtained by, or to have been made by means of, the interception conducted by the Australian Federal Police.

Clause 8 - Investigation of an offence; Involvement in an offence; Issue of warrant to agency or eligible authority; Judges; Lawfully obtained information; Offences; Officer of the Commonwealth, of a State or of a Territory; Person to whom application relates; Proceeding by way of a prosecution for an offence; Proceeding for confiscation or forfeiture or for pecuniary penalties; Relevant proceedings; Terminating the appointment of an officer.

11. Clause 8 inserts proposed section 6A into the Principal Act which provides that a reference to the investigation by an agency or by an eligible authority of a State of an offence is a reference to: in the case of the Australian Federal Police - an investigation in the course of the performance by the Australian Federal Police of its functions; in the case of a Police Force of a State - an investigation in the course of the performance by that police force of its functions; and in the case of the Authority or the Drug Crime Commission - a prescribed investigation. A reference to an investigation in relation to an offence means, in the case of an offence that is suspected on reasonable grounds of being likely to be committed, a reference to the investigation of the likely commission of the offence.

12. Clause 8 also inserts proposed section 6B into the Principal Act which limits the circumstances in which a person shall be taken to be involved in an offence to situations where the person has committed or is committing the offence, or is suspected on reasonable grounds of having committed or committing, or of being likely to commit the offence.

13. Clause 8 inserts proposed section 6C into the Principal Act which provides that a warrant issued on an application by an agency, an officer of an agency or by an eligible authority of a State shall be taken to be issued to that agency or eligible authority.

14. Clause 8 also inserts into the Principal Act proposed section 6D providing for the declaration by the Minister, by notice in the Gazette, of Judges to be eligible Judges for the purposes of the legislation. Under proposed section 6D, only a person who is a Judge of a court created by the Parliament may be declared to be an eligible Judge, and only if that Judge has consented in writing to being nominated for declaration. Proposed sub-section 6D(4) provides that a

person who is or has been an eligible Judge is not liable for any act or omission in the performance of an eligible Judge's function or power under the legislation.

15. The purpose of proposed section 6D is to avoid any possible argument that the power given to eligible Judges to issue interception warrants to members of the Australian Federal Police, the National Crime Authority and eligible authorities of a State in relation to which a declaration under proposed section 34 is in force, is invalid because it amounts to the conferral of a non-judicial power on a court. The matter was considered by the High Court in Hilton v. Wells (1985) 58 ALR 245, where a majority held that there is no necessary constitutional impediment preventing the Parliament from conferring non-judicial power on a particular individual who happened to be a member of a court. Proposed section 6D makes it clear that the power to issue warrants is conferred on individual persons or classes of persons declared by the Minister who happen to be Judges of a court created by the Parliament.

16. Clause 7 also inserts into the Principal Act a proposed section 6E which provides that a reference in the Act to lawfully obtained information is a reference to information obtained by intercepting a communication otherwise than in contravention of sub-section 7(1) or by virtue of a warrant issued under section 11 or 11A or Part IV of the Principal Act. This reference is subject to proposed sub-section 6E(2) which provides that a reference in the Act to lawfully obtained information that was originally obtained by an agency, or by an eligible authority of a State, is a reference to information obtained in any case, by intercepting a communication under a warrant issued to the agency or eligible authority or, in the case of the Australian Federal Police, by virtue of a warrant issued under Part IV of the Principal Act.

17. Clause 7 also inserts into the Principal Act proposed section 6F defining offence or offences of a particular kind as offences that have been committed or are being committed or are suspected on reasonable grounds of having been committed, of being committed or being likely to be committed.

18. Clause 7 also inserts proposed section 6G. The term officer, in relation to the Commonwealth, is defined to include a person holding, or acting in, an office (including a judicial office) or appointment, or employed under a law of the Commonwealth and a person who is, or is a member of, an authority or body established for a public purpose by or under a law of the Commonwealth or who is an officer or employee of such an authority or body and an officer of the Australian Capital Territory. The term officer, in relation to a State, is defined to include a person holding, or acting in, an office (including a judicial office) or appointment, or employed, under a law of the State and a person who is, or is a member of, an authority or body established for a public purpose by or under a law of the State or is an officer or employee of such an authority or body but excludes officers of the Police Force of a State.

19. Clause 7 also inserts into the Principal Act proposed section 6H providing that an application by an agency to a Judge for a warrant in respect of a telecommunications service relates to a particular person if, and only if, information has been or is to be given in order to satisfy the Judge of the matters referred to in proposed paragraphs 45(c) and (b) or 46(1)(c) and (d).

20. Clause 7 also inserts into the Principal Act proposed section 6J which provides that a reference to a proceeding by way of a prosecution for an offence includes a reference to a proceeding with a view to the committal of a person for trial for the offence.

21. Clause 7 also inserts into the Principal Act proposed section 6K providing that references to proceedings for confiscation or forfeiture of property or for pecuniary penalties includes a reference to a proceeding for the condemnation or recovery of a ship or aircraft, or of goods, seized under section 203 of the Customs Act 1901 in connection with the commission of a narcotics offence and a proceeding by way of an application for an order under sub-section 243B(1) of the Customs Act.

22. Clause 7 also inserts into the Principal Act proposed section 6L which provides that a reference in the Act, in relation to an agency or an eligible authority of a State, to a relevant proceeding is, in the case of the Australian Federal Police or a Police Force of a State, a reference to:

- . a proceeding by way of prosecution for a prescribed offence that is an offence against a law of the Commonwealth or the State;
- . a proceeding under a law of the Commonwealth or a State for the confiscation or forfeiture of property, or for the imposition of a pecuniary penalty in connection with the commission of a prescribed offence;
- . a proceeding for the taking of evidence as mentioned in paragraph 5B(c) where the proceeding relates to a prescribed offence or a prescribed offence that is an offence against a law of a State;
- . a proceeding for the extradition of a person as mentioned in paragraph 5B(d), in so far as it relates to a prescribed offence that is an offence against a law of the Commonwealth;
- . a police disciplinary proceeding; or

any other proceeding in so far as it relates to alleged misbehaviour or improper conduct of an officer of the Commonwealth or a State.

23. Proposed sub-section 6L(2) provides that a reference in the Act in relation to an agency or an eligible authority of a State to a relevant proceeding is: in the case of the National Crime Authority - a reference to a proceeding by way of a prosecution for a prescribed offence to which a prescribed investigation relates; or in the case of the Drug Crime Commission - a reference to a proceeding by way of a prosecution for a prescribed offence that is an offence against the law of New South Wales and to which a prescribed investigation relates.

24. Clause 7 also inserts in the Principal Act a proposed section 6M, which provides that a reference to terminating, because of misbehaviour or improper conduct, the appointment of an officer of the Commonwealth or a State includes a reference to removing the officer from office on the ground of misbehaviour or improper conduct.

Clause 9 - Telecommunications not to be intercepted

25. Clause 9 amends section 7 of the Principal Act by omitting sub-sections 4-8, inclusive. As so amended, section 7 will prohibit the interception of telecommunications (sub-section 7(1)) subject to the exceptions set out in sub-section 7(2). Those exceptions include an interception under a warrant issued under the Act to ASIO, the Australian Federal Police, the National Crime Authority or an eligible authority of the State or Territory in relation to which a declaration under section 34 is in force.

26. Clause 9 limits the scope of the exception contained in sub-paragraph 7(2)(a)(ii) of the Principal Act, which permitted an interception by an officer of Telecom for the purpose of identifying or tracing any person who has contravened, or is suspected of having contravened or being likely to contravene, a provision of the Telecommunications Act 1975 or of any regulation or by-law in force under that Act. In his Report of the Review of Matters Affecting the Australian Telecommunications Commission (1984), Mr F.H.R. Vincent, Q.C., recommended that "Staff By-laws and other trivial offences in the Telecommunications Act, General By-laws and Regulations and which are currently the basis of some permitted interceptions" be excluded from the operation of sub-paragraph 7(2)(a)(ii). As amended by clause 9, the exemption provided by new sub-paragraph 7(2)(a)(ii) will extend only in relation to contraventions, or suspected contraventions or likely contraventions, of sections 86, 87, 88, 94 or 94A of the Telecommunications Act.

Clause 10 - Repeal of section 7A, 7B, 7BA and 7C

27. Clause 9 repeals section 7A, 7B and 7BA of the Principal Act as the operation of those sections has been exhausted. Section 7C is replaced by provisions contained in proposed Part VIII.

Clause 11 - How warrants etc to be dealt with

28. Clause 11 amends section 15 of the Principal Act, which sets out the procedure to be followed where the Attorney-General issues a warrant to ASIO under sections 9 or 11, or revokes a warrant issued under sections 9, 10 or 11. Clause 11 omits paragraphs 15(1)(c) and 15(2)(c) and inserts new sub-sections 15(1A) and 15(2A). The effect of this amendment is to remove the requirement for the Attorney-General to certify and forward, to the Director-General of Security or the Managing Director of Telecom, as the case requires, copies of warrants issued, or

instruments revoking warrants issued, by the Attorney-General. Rather, the requirement in sub-sections 15(1A) and 15(2A) to certify copies of warrants or revocations and to send them to the Managing Director and the Director-General, respectively, is to be on the office-holder to whom the Attorney-General has sent the original warrant or instrument of revocation. Thus, under new sub-section 15(1A), the Director-General of Security, on receiving a warrant or instrument of revocation from the Attorney-General under paragraph 15(1)(b), is to send a copy of the warrant or instrument of revocation, certified to be a true copy by the Director-General or a Deputy Director-General of Security, to the Managing Director of Telecom.

29. Similarly, under new sub-section 15(2A), the Managing Director of Telecom, on receiving a warrant or an instrument of revocation from the Attorney-General under paragraph 15(2)(b), is to send a copy of the warrant or instrument of revocation, certified to be a true copy by the Managing-Director or Secretary of Telecom, to the Director-General of Security.

30. Clause 11 also omits sub-sections 15(6) and (7), which relate to the records which the Director-General of Security and the Managing Director of Telecom are required to keep, and substitutes new sub-sections 15(6) and (7), which take account of the new arrangements provided for by new sub-sections 15(1A) and (2A).

Clause 12 - Repeal of section 16

31. Clause 12 repeals section 16 of the Principal Act, which provides that a person shall not, without reasonable excuse, obstruct or hinder a person acting in pursuance of warrant issued under section 9, 10 or 11. This offence is to be replaced by a new offence created by proposed section 107.

Clause 13 - Amendment of Heading

32. Clause 13 amends the heading to Part IV of the Principal Act. The words "Telecommunications and" are omitted from the heading, so that the heading to Part IV reads "Warrants authorising the Australian Federal Police to intercept telegrams". The amendment of the heading to Part IV takes account of the change to the content of Part IV effected by the Bill with the insertion of proposed Part VI.

Clause 14 - Repeal of sections 18, 19 and 20 and substitution of new sections

33. Clause 14 repeals sections 18, 19 and 20 of the Principal Act. Section 18 defines the word "Judge" for the purposes of Part IV and section 19 provides that the Governor-General may make arrangements with the Governor of a State, or with the Administrator of the Northern Territory, for persons holding office as Judges of the Supreme Court of that State or of the Northern Territory to perform the functions of a Judge under Part IV. Sections 18 and 19 are being replaced by proposed section 6D. Clause 14 also repeals section 20 of the Principal Act, which provides for the issue of warrants to members of the Australian Federal Police in respect of telecommunications services. Section 20 is being replaced by the proposed Part VI being inserted in the Principal Act by the Bill.

34. Clause 14 also inserts proposed sections 20A and 20B, making telegram inspections powers available to the Australian Federal Police in relation to class 1 offences and class 2 offences. The present provision enabling the inspection of telegrams (section 21 of the Principal Act) applies to certain narcotics offences only and the insertion of the new sections will avoid any inconsistency between the offences in relation to which telecommunications interceptions and telegram

inspections are available to the Australian Federal Police. The requirements in relation to the issue of warrants are similar to those included in proposed sections 45 and 46.

35. Clause 14 also amends section 21 of the Principal Act by omitting sub-section 21(1), which is replaced by proposed sections 20A and 20B, and by making consequential amendments to sub-sections 21(2) and (3). Clause 14 also amends section 21 by reducing the maximum period for which a warrant to inspect telegrams is to remain in force from six months to ninety days, and provides that a Judge shall not vary a warrant issued under sections 20A and 20B by extending the period for which it is to be in force.

Clause 16 - Repeal of sections 22, 23 and 24 and substitution of new section

36. Clause 16 repeals sections 22, 23 and 24 of the Principal Act, and substitutes a new section 23. Section 22 provides for the Commissioner of the Australian Federal Police to approve persons to exercise the authority conferred by warrants issued under section 20. This section is replaced by the proposed section 55.

37. Section 23 provides for the revocation by the Commissioner of the Australian Federal Police of warrants issued under section 20 or 21 where the Commissioner is satisfied that the grounds on which the warrant was issued have ceased to exist. Proposed section 56 makes similar provision in relation to warrants authorising the interception of telecommunications, and new section 23 is substituted to make similar provision in respect of warrants issued under Part IV authorising the inspection of telegrams. The proposed new section, like the section it replaces, imposes two separate obligations on the Commissioner where the grounds on which a warrant was issued have ceased to exist. Those obligations are to cause inspections under the warrant to be discontinued forthwith and to revoke the warrant in writing.

The new section, however, will enable a Deputy Commissioner to carry out those duties, thus ensuring speedy action in cases where the Commissioner is for any reason unavailable.

38. Clause 16 also repeals section 24 of the Principal Act, which regulates the destruction of records of intercepted communications and telegrams. Proposed section 80 makes provision for the destruction of certain records, including copies of telegrams inspected under a warrant issued under section 21. The proposed section requires the Commissioner of the Australian Federal Police to cause the record to be destroyed where it is in the possession of the Australian Federal Police and the Commissioner is satisfied that the record is not likely to be required for a "permitted purpose" in relation to the Australian Federal Police.

Clause 17 - How warrants etc to be dealt with

39. Clause 17 amends section 25 of the Principal Act by omitting sub-section 25(1), which requires the Commissioner of the Australian Federal Police to cause a certified copy of a warrant issued under section 20 authorising the interception of telecommunications, or an instrument revoking such a warrant, to be forwarded to the Managing Director of Telecom. Proposed section 60 makes similar provision in relation to warrants issued under proposed Part VI, whilst amendments to sub-section 25(2) impose the same requirement on the Commissioner with respect to warrants issued under Part IV.

40. Clause 17 also amends section 25 by omitting sub-section 25(3), which requires the Commissioner of the Australian Federal Police to retain all warrants issued under section 20 or copies of warrants issued under section 21 and each instrument issued under section 23 revoking such warrants. Proposed section 81 makes similar provision for all warrants issued to the Australian Federal Police under Part IV or VI.

Clause 18 - Repeal of sections 25A, 26, 27, 28 and 29

41. Clause 18 repeals section 25A of the Principal Act (Evidentiary certificates), as a consequence of the insertion of proposed section 61 in the Act. Sub-clauses 18(2) and (3) save the effect of evidentiary certificates issued under section 25A.

42. Clause 18 also repeals section 26 of the Principal Act (the offence of obstruction), section 27 (reports to be made to Minister concerning interceptions), section 28 (regulations) and section 29 (interpretation). These sections are replaced, respectively, by provisions found at proposed section 107 (obstruction), proposed section 95 (Commonwealth agencies to report to Minister about applications and warrants under Parts IV and VI) and proposed section 109 (regulations).

Clause 19 - Emergency request

43. Clause 19 amends section 30 of the Principal Act. Section 30 is concerned with interceptions performed at the request of police officers in specified circumstances of emergency involving danger to life, or the risk of injury. New sub-section 30(4) requires the giving of written confirmation of the request setting out the information given by the police officer to an officer of Telecom in connection with the request.

Clause 20 - Repeal of section 31

44. Clause 20 repeals section 31 of the Principal Act, which deals with the Annual Report to be made to the Minister by the Managing Director of Telecom. This section is replaced by proposed sections 94 and 105.

Clause 21 - Addition of new Parts VI, VII, VIII, IX, X AND XI

45. Clause 21 amends the Principal Act by adding six new Parts. Proposed Part VI (sections 32 to 61, inclusive) deals with warrants authorising law enforcement agencies to intercept communications. Proposed Part VII (sections 62 to 80, inclusive) makes provision for dealing with and communicating intercepted information. Proposed Part VIII (sections 81 to 93, inclusive) deals with the keeping and inspection of records held by Commonwealth agencies. Proposed Part IX (sections 94 to 105, inclusive) provides for reports about interceptions under Parts IV, V and VI. Proposed Part X (sections 106 to 108, inclusive) provides for offences. Proposed Part XI provides a regulation making power, and for the amendment of the Principal Act and other Acts as set out in Schedules 1 and 2.

PART VI - WARRANTS AUTHORISING LAW ENFORCEMENT AGENCIES TO INTERCEPT TELECOMMUNICATIONS

Division 1 - Telecommunications Interception Division of the Australian Federal Police.

46. Under proposed section 32, a Division known as the Telecommunications Interception Division is to be constituted within the Australian Federal Police.

47. Proposed section 33 provides that the function of the Telecommunications Interception Division is to execute warrants, that is, warrants issued or to be issued under proposed sections 45, 46 or 48.

Division 2 - Declaration of State Law Enforcement Authorities as Agencies.

48. Under proposed section 34, and subject to proposed section 35, the Minister may, at the request of the Premier of a State or the Chief Minister of the Northern Territory,

declare an eligible authority to be an agency for the purposes of the legislation. Proposed sub-section 34(2), in applying section 5 of the Evidence Act 1905 to such a declaration as that section applies to an order made by a Minister, means that evidence of a declaration may be given in courts by the production of a document purporting to be certified by the Minister as a true copy or extract thereof. The proposed definition of eligible authority is contained in clause 5.

49. Proposed section 35 requires the Minister to be satisfied, before making a declaration under section 34, that the law of the State concerned makes satisfactory provision:

- (a) for the retention of copies of warrants and instruments of revocation by the eligible authority of the State, and for the retention of proper records relating to interceptions, the use made of intercepted information and the communication of intercepted information;
- (b) for the chief officer of the eligible authority to give to the State Minister copies of all warrants or instruments of revocation;
- (c) within three months after a warrant ceases to be in force, to report to the State Minister on the use made of intercepted information and the communication of that information;
- (d) requiring the chief officer of the eligible authority to give to the State Minister, within two months after each 30 June, a report setting out such information as is required to be set out in the Commonwealth Minister's annual report under proposed Division 2 of Part IX;
- (e) for the State Minister to give to the Commonwealth Minister copies of all warrants and instruments of revocation and a report, and copies of the reports referred to in paragraph (c) and (d);

- (f) requiring the chief officer of the eligible authority to keep restricted records in a secure place;
- (g) for the destruction of restricted records where the chief officer is satisfied that the record is not required for a permitted purpose;
- (h) for the regular inspection of records by an independent authority to ascertain the extent of compliance with the requirements of the State law;
- (j) requiring that authority to report to the relevant State Minister the results of each inspection;
- (k) where the inspecting authority is of the opinion that an officer of the eligible authority has contravened a provision of the legislation or a requirement referred to in paragraph (b) or (c) - empowering the inspecting authority to include its opinion in the report to the relevant State or Territory Minister;
- (m) requiring the relevant State Minister to give to the Commonwealth Minister a copy of the report of the inspecting authority.

50. Before making a declaration, the Commonwealth Minister must also be satisfied that the State has entered into an agreement to pay all expenses connected with the issue and execution of warrants and to pay a proportion of the expenses incurred in connection with establishing the Telecommunications Interception Division (proposed sub-section 41(2)).

51. Proposed section 36 applies certain provisions of the Acts Interpretation Act 1901, so that each declaration made by the Minister under section 34 is to be treated as if that declaration were a regulation for the purposes of sections 48, 49 and 50 of the Acts Interpretation Act. In applying those

sections, proposed section 36 requires a declaration made under section 34 to be notified in the Gazette, to be laid before each House of the Parliament within 15 sitting days, and to be subject to disallowance by a resolution of either House of the Parliament.

52. Proposed section 37 empowers the Minister to revoke a declaration where the relevant State law is not maintained; where compliance with the law is unsatisfactory; where the agreement in relation to the payment of costs ceases to operate or is unsatisfactorily observed; or where there is not satisfactory compliance with the provisions of the Act. A declaration may also be revoked on the request of the relevant Premier.

53. Proposed section 38 saves the effect of a warrant that was issued to an eligible authority when a declaration under section 34 was in force.

Division 3 - Applications for Warrants.

54. Proposed section 39 provides that an agency, which means the Australian Federal Police, the National Crime Authority or an eligible authority of a State or Territory in relation to which a declaration under proposed section 34 is in force, may apply to an eligible judge for a warrant in respect of a telecommunications service. The definition of eligible judge is contained in proposed section 6D.

55. Proposed sub-section 39(2) provides that an application for a warrant is to be made on an agency's behalf by:

in the case of the Australian Federal Police - a member of the Australian Federal Police;

- . in the case of the National Crime Authority - a member of the National Crime Authority, or a police officer who is a member of the staff of the Authority within the meaning of its Act;
- . in the case of a State Police Force - an officer of that Police Force; or
- . in the case of the New South Wales Drug Crime Commission - a member of that Commission, or an officer of the New South Wales Police Force who is a member of the staff of the Commission.

56. Proposed sub-section 40(1) provides that an application for a warrant (other than telephone application) is to be in writing. Proposed sub-section 40(2) provides that, where the chief officer of the agency or a person authorised to make telephone applications under proposed sub-section 40(3) thinks it necessary because of urgent circumstances to make the application for a warrant by telephone, that person may so apply by telephone. The proposed definition of chief officer is contained in clause 5.

57. Under proposed section 41, a written application for a warrant is to set out the name of the agency on behalf of which the application is being made, and the name of the person making the application on the agency's behalf.

58. Under proposed section 42, an application for a warrant is to be accompanied by an affidavit setting out the facts and other grounds relied on by the applicant. Proposed sub-section 42(3) requires the affidavit to specify the period for which the applicant requests the warrant to be in force and why that period is considered necessary. Proposed sub-section 42(4) requires the affidavit also to set out, in relation to the telecommunications service to which, and the person or persons to whom, the application relates, the following information:

- . the number of previous applications for warrants made by the agency relating to the service or person;
- . the number of previous warrants issued on such applications; and
- . particulars of the use made by the agency of the intercepted information obtained under such warrants.

59. Proposed section 43 specifies the information to be given to a Judge when an application for a warrant is made by telephone. The information, which shall be given orally or in writing as the Judge direct, is to include particulars of the urgent circumstances necessitating the application for a warrant by telephone; and each matter that proposed section 41, 42 or 48 would require to be included in the application or the affidavit accompanying the application if the application had been made in writing.

60. Proposed section 44 provides that a Judge may require further information to be given in relation to an application, and such information is to be given on oath if the application was made in writing and shall be given orally or otherwise, as the Judge directs.

Division 4 - Warrants.

61. Proposed section 45 provides for the issue by a Judge of a warrant in relation to a class 1 offence. Before issuing a warrant authorising the interception of communications made to or from the service, the Judge must be satisfied on the basis of information furnished to the Judge that:

- (a) the application was made in accordance with Division 3 of proposed Part VI;

- (b) in the case of a telephone application - it was necessary to make the application by telephone for reasons of urgency;
- (c) there are reasonable grounds for suspecting that the relevant telecommunications service is being, or is likely to be, used by a particular person;
- (d) information obtained by intercepting communications to or from the service would be likely to assist with the investigation of a class 1 offence in which that person is involved; and
- (e) having regard to-

the extent to which investigation methods other than interception have been used by the relevant agency; how much of the information referred to in paragraph (d) would be likely to be obtained by using such other methods; and how much the use of such other methods would be likely to result in prejudice to the investigation of the offence (either because of delay in obtaining the information or another reason) -

some or all of that information cannot appropriately be obtained by such methods.

62. Proposed section 46 provides for the issue by a Judge of a warrant in relation to a class 2 offence. Before issuing a warrant, the Judge must be satisfied, on the basis of information furnished to the Judge that:

- (a) the application was made in accordance with Division 3 of proposed Part VI;

- (b) in the case of a telephone application - it was necessary to make the application by telephone for reasons of urgency;
- (c) there are reasonable grounds for suspecting that the relevant telecommunications service is being, or is likely to be, used by a particular person;
- (d) information obtained by intercepting communications to or from the service would be likely to assist with the investigation of a class 2 offence in which that person is involved; and
- (e) having regard to the further matters specified in proposed sub-section 46(2), the Judge should issue a warrant authorising interception.

63. The matters specified in proposed sub-section 46(2) to which the Judge shall have regard when considering an application for a warrant in relation to a class 2 offence are:

- (a) how much the privacy of any person would be likely to be interfered with by intercepting communications made to or from the relevant service;
- (b) the gravity of the conduct constituting the offence being investigated;
- (c) how much the information referred to in paragraph (d) above would be likely to assist the investigation of the offence;
- (d) to what extent investigation methods other than interception have been used by the agency applying for the warrant;
- (e) how much the use of such other methods would be likely to assist the investigation of the offence; and

- (f) how much the use of such other methods would be likely to prejudice the investigation of the offence (whether because of delay or another reason).

64. Proposed section 47 makes it clear that a warrant issued under proposed sections 45 or 46 does not authorise interception of communications except as a result of action taken by an officer of Telecom for the purpose of enabling the execution of the warrant.

65. Under proposed section 48, provision is made for an agency to apply to an eligible Judge for the issue of a warrant authorising entry on premises. Such an application is to be accompanied by an affidavit stating why it is necessary for the warrant to authorise entry on the specified premises; setting out the number of previous applications that the agency has made requesting authorisation for entry on those premises; and setting out the number of warrants previously issued on such applications (proposed sub-section 48(2)).

66. Before issuing a warrant authorising entry on premises, the Judge must be satisfied, on the basis of information furnished to the Judge, that it would be impractical or inappropriate to intercept communications in respect of the service otherwise than by using equipment installed on the specified premises, because of technical reasons connected with the operation of the service or the telecommunications system of which the service is part; or because execution of the warrant as the result of action taken by an officer of Telecom might jeopardise the security of the investigation of the offence in which the person to whom the application relates is involved (proposed sub-section 48(3)).

67. If so satisfied, the Judge may issue a warrant authorising entry on the specified premises to install, maintain, use or recover equipment used to intercept communications made to or from the service, and authorising interception of such communications by the use of that

equipment. If such a warrant is issued, the warrant must state whether entry is authorised to be made at any time or only during specified hours; and the warrant may provide that entry may be made to the premises without permission first being sought, and authorise such measures as are reasonable and necessary to obtain entry (proposed sub-sections 48(4) and (5)).

68. Under proposed section 49, a warrant must be in accordance with the prescribed form and be signed by the Judge who issues it. The warrant may specify conditions or restrictions to interceptions under it. The warrant is to specify the period for which it is to be in force, with a maximum period of 90 days being provided for. Whilst a Judge shall not vary a warrant by extending the period for which it is to be in force, subsequent warrants are, however, to be available in respect of the same service. Further, a warrant is to set out short particulars of each serious offence in relation to which the Judge issuing the warrant was satisfied, as mentioned in proposed paragraphs 45(d) or 46(1)(d).

69. Proposed section 50 sets out the procedures to be followed when a Judge issues a warrant on a telephone application. The proposed provisions require a Judge who issues a warrant on a telephone application to complete and sign the warrant and give it to the person who applied for it. The Judge must also inform the person making the application of the terms of the warrant, and the day on which and the time at which the warrant was signed (proposed sub-section 50(1)). A Judge issuing a warrant on a telephone application is to keep a copy of the warrant (proposed sub-section 50(2)).

70. Proposed section 51 sets out the procedures to be followed by an agency after a warrant is issued on a telephone application made on the agency's behalf. Within one working day of the warrant being issued, the applicant is to provide to the Judge issuing the warrant affidavits, by each person

who furnished information to the Judge in relation to the application, setting out the information given by that person and, unless the applicant is the chief officer of the agency, a copy of the authorisation under proposed sub-section 40(3).

71. Proposed section 52 sets out the procedures to be followed where a Judge who issued a warrant on a telephone application is satisfied that the requirements of proposed section 51 have not been complied with. In such a case, the Judge may revoke the warrant and, if so, shall inform the person who made the application on the agency's behalf or the chief officer of the agency of the revocation, and shall give the instrument of revocation to the applicant or to the chief officer as soon as practicable. Where a revoked warrant has been issued to an agency other than the Australian Federal Police, the chief officer of the agency is to inform the Commissioner of the Australian Federal Police of the revocation and give the instrument of revocation to the Commissioner as soon as practicable (proposed sub-section 52(2)).

72. Proposed section 53 sets out the procedure to be followed by an agency other than the Australian Federal Police where a warrant is issued to that agency under section 45, 46 or 48. In such a case, the chief officer of the relevant agency is to inform the Commissioner of the Australian Federal Police of the issue of the warrant and to give the warrant to the Commissioner as soon as practicable. In the case of a warrant issued on a telephone application, the chief officer of the relevant agency may notify the Commissioner of the Australian Federal Police in writing of the issue of the warrant. Interception under a warrant issued on a telephone application may not take place until such notification is given to the Commissioner (see proposed paragraph 54(b)), or the Commissioner is given the warrant. The notification under proposed paragraph 53(1)(b) is to set out the name of the Judge who issued the warrant, the day on which and the time at

which the Judge signed the warrant and the terms of the warrant as indicated by the Judge under section 50 (proposed sub-section 53(2)).

73. Under proposed section 54, a warrant issued to an agency other than the Australian Federal Police does not come into force until the Commissioner of the Australian Federal Police receives the warrant or, in the case of a warrant issued on a telephone application, is notified of the issue of the warrant under paragraph 53(1)(b).

74. Proposed section 55 provides that the authority to intercept telecommunications conferred by a warrant may only be exercised by a member of the Australian Federal Police who has been approved in writing to exercise the authority conferred by a warrant. Such approval may be given by the Commissioner of the Australian Federal Police or a member of the Australian Federal Police in relation to whom an appointment by the Commissioner under sub-section 55(3) is in force. The expression "a member of the Australian Federal Police" is defined to include a special member appointed under section 27 of the Australian Federal Police Act 1979.

75. Proposed section 56 provides for the revocation by the Commissioner or a Deputy Commissioner of the Australian Federal Police of a warrant issued to the Australian Federal Police before the warrant ceases to be in force. Where the Commissioner or a Deputy Commissioner is satisfied that the grounds on which a warrant was issued have ceased to exist, proposed section 56 requires the revocation of the warrant and the taking of steps necessary to ensure that interceptions under the warrant are discontinued.

76. Proposed section 57 makes similar provision in relation to a warrant issued to an agency other than the Australian Federal Police. In such a case, the chief officer of the relevant agency is to inform the Commissioner of the Australian Federal Police that the chief officer proposes to

revoke the warrant, and shall revoke the warrant in writing. In addition, the chief officer of an agency other than the Australian Federal Police may revoke a warrant issued to it before the warrant ceases to be in force after causing the Commissioner of the Australian Federal Police to be informed of the proposed revocation (sub-section 57(2)). Where the chief officer of an agency revokes a warrant, the chief officer is to inform the Commissioner of Police of the revocation and give the instrument of revocation to the Commissioner as soon as practicable.

77. Proposed section 58 requires the Commissioner of the Australian Federal Police to take such steps as are necessary to ensure the discontinuance of interceptions under a warrant where a warrant issued to the Australian Federal Police on a telephone application is revoked under proposed sub-section 52(1) or the Commissioner of the Australian Federal Police is informed of the revocation or proposed revocation of a warrant issued to an agency other than the Australian Federal Police under proposed sub-section 52(2), 57(1) or (2).

78. Proposed section 59 provides that a warrant issued to an agency other than the Australian Federal Police which is revoked under proposed sub-section 52(2), 57(1) or (2) does not cease to be in force until the Commissioner of the Australian Federal Police receives the instrument of revocation or the warrant expires, whichever happens first.

79. Proposed section 60 requires the chief officer of the agency to which a warrant is issued, or a warrant so issued is revoked to inform the Managing Director of Telecom of the issue or revocation, and to give a certified copy of the warrant or instrument of revocation to the Managing Director as soon as practicable. In addition, where the chief officer of an agency other than the Australian Federal Police notifies the Commissioner of the Australian Federal Police under proposed paragraph 53(1)(b) of the issue of a warrant to the

agency, the chief officer shall cause a copy of the notification to be given to the Managing Director of Telecom as soon as practicable.

80. Proposed section 61 replaces the equivalent provisions of section 25A of the Principal Act, repealed by clause 18 of the Bill. Proposed section 61 provides for the issue of conclusive evidentiary certificates by the Managing Director of Telecom in respect of acts or things done by an officer of Telecom in order to enable a warrant to be executed.

81. Proposed section 61 also provides for the issue of a certificate by the Commissioner or a Deputy Commissioner of the Australian Federal Police in respect of acts or things done to enable a warrant issued to an agency to be executed, or in connection with the execution of such a warrant (proposed sub-section 61(3)). Proposed sub-section 61(4) provides for the issue of a certificate by a certifying officer of an agency with respect to acts or things done in connection with communicating, using, making a record of, or giving in evidence lawfully obtained information that was originally obtained by the relevant agency. In the case of the Australian Federal Police and the Police Force of a State, "certifying officer" means the Commissioner of Police, a Deputy Commissioner of Police or an officer with equivalent rank to a Deputy Commissioner of Police. In the case of the National Crime Authority and the New South Wales State Drug Crime Commission, "certifying officer" means a member of the National Crime Authority or of the Drug Crime Commission.

82. Proposed sub-section 61(5) provides that a certificate issued under proposed sub-section 61(3) or (4) shall be received in a exempt proceeding as prima facie evidence of the matters stated. Hence, the certificates issued under sub-sections 61(3) and (4), unlike the certificate issued by the Managing Director of Telecom under sub-section 61(1) are not conclusive. The proposed definition of exempt proceeding is contained in proposed section 5B.

PART VII - DEALING WITH INTERCEPTED INFORMATION

83. Proposed section 62 provides that Part VII applies to information obtained, an interception performed, or a proceeding begun, whether before or after the commencement of proposed Part VII.

84. Proposed section 63 provides that, after the commencement of proposed Part VII, a person shall not communicate, use, make a record of or give in evidence in a proceeding information obtained under a warrant or information obtained by intercepting in contravention of sub-section 7(1) of the Principal Act, except as provided for in proposed Part VII.

85. Proposed section 64 makes provision for dealing with intercepted information in connection with a proceeding begun before the commencement of proposed Part VII. Proposed sub-section 64(1) provides that a person may, for a purpose connected with a proceeding begun before the commencement of proposed Part VII, communicate, use, or make a record of, or give in evidence in such a proceeding, information obtained by intercepting a communication before the commencement of proposed Part VII (whether or not the interception was done in contravention of sub-section 7(1) of the Principal Act) or obtained by virtue of a warrant issued under section 11 or 11A or Part IV. A proceeding by way of a prosecution of a person on indictment for an offence is deemed, under proposed sub-section 64(2), to have begun before the commencement of proposed Part VII if a committal proceeding for the offence had begun before the commencement. Further, a proceeding by way of an appeal from another proceeding is deemed, under proposed sub-section 64(3), to have begun before the commencement of Part VII if the other proceeding began or is deemed to have begun before the commencement.

86. Proposed section 65 makes provision for dealing with lawfully obtained information in connection with the performance by ASIO of its functions. Proposed sub-section 65(1) provides that a person may communicate, use, or make a record of lawfully obtained information, other than information obtained under a warrant issued pursuant to section 11A of the Principal Act, in connection with the performance by ASIO of its functions. Proposed sub-section 65(2) provides that a person, being the Director-General of Security or an officer or employee of ASIO, may communicate, use or make a record of information intercepted under a warrant issued pursuant to section 11A in connection with the performance by ASIO of its functions.

87. Proposed section 66 provides that the Director-General of Security, or an officer authorised by the Director-General, may communicate lawfully obtained information to another person in accordance with paragraph 18(3)(a) or (c) of the Australian Security Intelligence Organization Act 1979. The provisions in the ASIO Act relate to the communication of information in the possession of ASIO where the information relates to the commission of an offence against the law of the Commonwealth, a State or Territory, being an offence punishable by imprisonment for life or for a maximum period of three years or longer; and information that has come into ASIO's possession outside Australia or concerns matters outside Australia which the Director-General is satisfied that the national interest requires to be communicated.

88. Proposed sub-section 66(2) provides that a person to whom information obtained under a warrant issued pursuant to section 11A of the Principal Act has been communicated, whether the communication of the information is in accordance with proposed sub-section 66(1) or in accordance with an approval given under proposed sub-section 66(2), may communicate that information to such persons and in such manner as are approved by the Attorney-General in writing.

89. Proposed section 67 provides that a person who has intercepted a communication under a warrant issued to an agency may communicate, to the person who applied for the warrant or to an officer of the relevant agency who is authorised by the chief officer of the agency under proposed sub-section 67(2) to receive information intercepted under the agency's warrants, information obtained by the interception. This provision is designed to ensure that information, intercepted by a person approved under proposed sub-section 55(2) to exercise the authority conferred by a warrant, is passed to the agency which obtained the relevant warrant.

90. Proposed section 68 makes provision for lawfully obtained information to be dealt with within the agency which obtained the warrant under which the information was intercepted. The proposed section provides that an officer of an agency may communicate, use or record lawfully obtained information, other than section 11A information, for a permitted purpose, and for no other purpose.

91. Proposed section 69 provides for the communication of lawfully obtained information by the agency which originally obtained the information to other agencies. It provides for the communication of such information:

- (a) if the information relates to activities prejudicial to security - to the Director-General of Security;
- (b) if the information relates to the commission of a relevant offence in relation to another agency - to the chief officer of the other agency or, if the agency is the Australian Federal Police or the Police Force of a State, to a member of the Australian Federal Police or that Police Force (the proposed definition of relevant offence is contained in clause 5);

- (c) if the information relates to a proceeding under a Commonwealth law for the confiscation or forfeiture of property, or the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence; an act or omission by a member of the Australian Federal Police that may give rise to a police disciplinary proceeding; or misbehaviour or improper conduct by an officer of the Commonwealth - to the Commissioner of the Australian Federal Police; and
- (d) if the information relates to a proceeding under a State law for the confiscation or forfeiture of property, or for the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence; an act or omission by an officer of the Police Force of a State that may give rise to a police disciplinary proceeding; or misbehaviour or improper conduct by an officer of a State - the Commissioner of the Police Force of that State.

92. Under proposed section 70, the chief officer of an eligible authority of a State in relation to which no declaration is in force under proposed section 34 may, by a request in writing given to the chief officer of another agency, ensure that the other agency, or an officer of the other agency, does not communicate information under proposed section 69 to the eligible authority (proposed sub-sections 70(1) and (3)). Such a request remains in force until the chief officer of the eligible authority revokes the request by writing to the chief officer of the other agency or until a declaration is made under proposed section 34 in relation to the eligible authority (proposed sub-section 70(2)). This provision has been included to ensure that, where a State does not wish to be subject to the provisions of the legislation, an eligible authority of that State is not provided with lawfully obtained information which attracts obligations imposed by the legislation. The proposed definition of eligible authority is contained in clause 5.

93. Proposed section 71 is a provision equivalent to paragraph 7(5)(d) of the Principal Act, repealed by clause 9 of the Bill. It permits the communication of information communicated to a police officer in accordance with sub-section 30(3) of the Principal Act or this proposed section. The provisions of section 30 deal with emergency requests for officers of Telecom to intercept telephone communications for the purpose of tracing callers in circumstances of emergency.

94. Proposed section 72 makes provision for dealing with information where a person suspects on reasonable grounds that the information was obtained in contravention of the legislation. The provision applies where a person suspects that information may establish that a prescribed offence, called in proposed section 72 a "suspected offence", has been committed. A "suspected offence" is an offence against sub-section 7(1) of the Principal Act, an offence against proposed section 63, or an ancillary offence relating to an offence against sub-section 7(1) or proposed section 63. The proposed definition of ancillary offence is contained in clause 5.

95. In such a case, the person may communicate the information to the Attorney-General, the Director of Public Prosecutions, the Commissioner of the Australian Federal Police or the Chairman of the National Crime Authority. The person to whom the information is communicated may communicate, use or make a record of the information for a purpose connected with: investigating a suspected offence; making a decision whether or not to begin a prosecution for a suspected offence; or a proceeding by way of a prosecution for a suspected offence.

96. Proposed section 73 provides that a person permitted by proposed section 66 or 69 or sub-section 72(2) to communicate information to another person may, for the purpose of doing so, make a record of the information.

97. Proposed section 74 provides that a person to whom information has been communicated in accordance with proposed section 64, 68 or this section or sub-section 72(3) for a purpose may communicate, use or make a record of that information for that purpose, and for no other purpose.

98. Proposed section 75 provides that a person may give lawfully obtained information, other than information obtained pursuant to a warrant issued under section 11A of the Principal Act, in evidence in an exempt proceeding. Proposed sub-section 75(2) provides that, in applying proposed sub-section 75(1), the question whether or not information was obtained by intercepting a communication in contravention of sub-section 7(1) of the Principal Act may be determined on the balance of probability.

99. Proposed section 76 makes provision for the giving in evidence of information obtained by intercepting a communication in contravention of sub-section 7(1) of the Principal Act but purportedly under a warrant, other than a warrant issued under section 11A of the Principal Act. Where the contravention is caused solely by a defect or irregularity, not being a substantial defect or irregularity, whether in relation to the issue or the execution of a warrant or purported warrant, the information may be given in evidence in an exempt proceeding where the court or body is satisfied that, but for the irregularity, the interception would not have contravened sub-section 7(1) and, in all the circumstances, the irregularity should be disregarded. The proposed definition of exempt proceeding is contained in proposed section 5B.

100. Proposed section 77 provides that information obtained in contravention of sub-section 7(1) of the Principal Act may be given in evidence in a prosecution for an offence against sub-section 7(1), proposed section 63 or an ancillary offence relating to sub-section 7(1) or proposed section 63. Such information should be admissible for the purpose of establishing the contravention of the legislation.

101. Proposed section 78 makes lawfully intercepted information inadmissible in evidence in any proceeding other than a proceeding in which proposed section 64, 75, 76 or 77 permits a person to give in evidence intercepted information. For the purpose of determining whether or not proposed section 64, 75, 76 or 77 permits a person to give in evidence intercepted information, a person may communicate, use, record or give in evidence information so obtained, and information so obtained, or a record of the communication, is admissible in evidence.

102. Proposed section 79 provides that proposed Part VII does not render anything admissible in evidence in proceedings to a greater extent than it would have been admissible in those proceedings if proposed Part VII had not been enacted.

103. Proposed section 80 provides that where a restricted record, whether made before or after the commencement of section 80, is in the possession of the Australian Federal Police, National Crime Authority, or an eligible authority of a State in relation to which there is no declaration in force under section 34, and the chief officer of the agency is satisfied that the restricted record is not likely to be required for a permitted purpose, the chief officer is to cause the restricted record to be destroyed. This provision does not apply to an eligible authority of a State in relation to which a declaration is in force under section 34 as the State legislation required to be enacted before a declaration under section 34 may be made is to make satisfactory provision for the destruction of restricted records (see proposed paragraph 34(1)(g)). The proposed definition of restricted record is contained in clause 5.

PART VIII - KEEPING AND INSPECTION OF INTERCEPTION RECORDS OF COMMONWEALTH AGENCIES

104. Proposed section 81 requires the Commissioner of the Australian Federal Police and the Chairman of the National Crime Authority to cause certain records relating to the conducting of interceptions to be kept in the records of the Australian Federal Police and the National Crime Authority. The creation and retention of comprehensive records concerning the conduct of interceptions is an integral part of the accountability and safeguard mechanisms, and provides the basis for the regular independent examination by the Ombudsman of the operation of the scheme for telecommunications interception.

105. Proposed sub-section 81(1) requires the Commissioner of the Australian Federal Police to cause to be kept in the records of the Australian Federal Police each warrant issued to the Australian Federal Police under Part IV or VI; each instrument revoking such a warrant; each warrant issued to another agency (that is, the National Crime Authority, and any eligible authority of a State declared under section 34) and given to the Commissioner of the Australian Federal Police in accordance with proposed section 53; each notification of the issue of a telephone warrant given to the Commissioner of the Australian Federal Police in accordance with the requirements of proposed paragraph 53(1)(b); each instrument that revoked a warrant issued to another agency (that is, the National Crime Authority or any eligible authority declared under section 34) and given to the Commissioner of the Australian Federal Police in accordance with proposed sub-section 52(2) or 57(3); a copy of each evidentiary certificate issued under proposed sub-section 61(3) or (4); and a copy of each authorisation by the Commissioner under sub-section 67(2).

106. Proposed sub-section 81(2) requires the Chairman of the National Crime Authority to cause to be kept in the records of the National Crime Authority a certified copy of each warrant issued to the National Crime Authority; a copy of each notification of the issuing of a telephone warrant, being a notification given to the Commissioner of the Australian Federal Police in accordance with proposed paragraph 53(1)(b); a certified copy of each instrument revoking such a warrant; a copy of each evidentiary certificate issued by the Chairman of the National Crime Authority under proposed sub-section 61(4); and a copy of each authorisation by the Chairman under sub-section 67(2).

107. Proposed section 82 requires the Commissioner of the Australian Federal Police and the Chairman of the National Crime Authority to cause certain records in writing to be made in relation to certain matters. Proposed sub-section 82(1) lists the matters to be recorded by the Australian Federal Police. They are:

- . Particulars of each telephone application made by the Australian Federal Police for the issue of a warrant under the authority of proposed Part VI;
- . In relation to each application by the Australian Federal Police for the issuing of a warrant under the authority of proposed Part VI, a statement as to whether a warrant was issued or whether the application was refused or withdrawn;
- . In relation to each warrant issued under the authority of proposed Part VI (that is, a warrant issued under the authority of proposed Part VI on the application of the Australian Federal Police, the National Crime Authority, or any eligible authority declared under section 34), particulars of the warrant, the day on which, and the time at which, each interception conducted under the authority of the warrant began, the duration of each

such interception and the name of the person who carried out each such interception;

Such information as is necessary to enable the Commissioner of the Australian Federal Police to report to the Minister in accordance with the requirements of proposed section 99;

Particulars relating to each restricted record that has at any time been in the possession of the Australian Federal Police, to include particulars of any warrant under the authority of which a restricted record has been made of an intercepted communication or inspected telegram; each occasion when the restricted record came to be in the possession of the Australian Federal Police; each occasion (if any) when the restricted record ceased, for any reason, to be in the possession of the Australian Federal Police; and details of each agency or other body (if any) from or to which, or other person (if any) from or to whom, the Australian Federal Police received or supplied the restricted record (the proposed definition of restricted record is contained in clause 5: restricted record means a record of an intercepted communication, whether or not the interception was in contravention of sub-section 7(1), or a record of a telegram copied under the authority of a warrant issued under section 11 or 11A or Part IV of the Principal Act);

Particulars of each use by the Australian Federal Police of lawfully obtained information;

Particulars of each communication of lawfully obtained information by an officer of the Australian Federal Police to a person or body other than such an officer; and

Particulars of each occasion when, to the knowledge of an officer of the Australian Federal Police, lawfully obtained information was given in evidence in a relevant proceeding in relation to the Australian Federal Police.

A definition of lawfully obtained information is contained in proposed section 6E in clause 8. Lawfully obtained information is information obtained by intercepting a communication otherwise than in contravention of sub-section 7(1), or obtained by virtue of a warrant issued under section 11 or 11A, or Part IV of the Principal Act. A definition of relevant proceeding is contained in proposed section 6L.

108. Proposed sub-section 82(2) requires the Chairman of the National Crime Authority to cause records in writing to be made relating to:

- . Particulars of each telephone application made by the National Crime Authority for the issue of a warrant under proposed Part VI;
- . In relation to each application by the National Crime Authority for the issue of a warrant under proposed Part VI, a statement as to whether the warrant was issued as a result of the application, or whether the application was refused or withdrawn;
- . In relation to each restricted record that has at any time been in the possession of the National Crime Authority, particulars of any warrant issued to the Authority under which a restricted record has been made of an intercepted communication; each occasion when the restricted record came to be in the possession of the National Crime Authority; each occasion (if any) when the restricted record ceased, for any reason, to be in the possession of the National Crime Authority; and details of each agency or other body (if any) from or to which, or other person (if any) from or to whom, the

National Crime Authority received or supplied the restricted record;

- . Particulars of each use by the National Crime Authority of lawfully obtained information;
- . Particulars of each communication of lawfully obtained information by an officer of the National Crime Authority to a person or body other than such an officer; and
- . Particulars of each occasion when, to the knowledge of an officer of the National Crime Authority, lawfully obtained information was given in evidence in a relevant proceeding in relation to the National Crime Authority.

109. Proposed sub-section 82(3) requires all records caused to be made under this section to be kept in the records of the Australian Federal Police and the National Crime Authority, respectively.

110. Proposed section 83 provides for additional functions for the Commonwealth Ombudsman. The Ombudsman has responsibility for conducting independent inspections of the records of the Australian Federal Police and the National Crime Authority in order to ascertain the extent of compliance by them with the proposed requirements as to record creation and keeping, and the destruction of material obtained as a consequence of interception, contained in proposed sections 80, 81 and 82. The Ombudsman also has the function of reporting to the Minister about the results of these inspections; and may do anything incidental or conducive to the performance of the functions set out.

111. Proposed section 84 imposes an obligation on the Ombudsman to inspect the records of the Australian Federal Police and the National Crime Authority. The normal procedure will be for the Ombudsman to conduct such an inspection at

least twice during each financial year, but proposed paragraph 84(1)(a) contains a transitional provision to take account of the initial period of the operation of the proposed amendments. Proposed sub-section 84(2) permits the Ombudsman to inspect the records of the Australian Federal Police and the National Crime Authority at any time. This is to allow for the possibility of conducting an inspection, should circumstances require it, in addition to the two inspections required during each financial year.

112. Proposed section 85 deals with the reports to be made by the Ombudsman. The Ombudsman is required to report annually to the Minister, in relation to both the Australian Federal Police and the National Crime Authority, on the results of inspections during the previous financial year. The Ombudsman may also report to the Minister at any time, and shall report to the Minister if so requested by the Minister. Whenever the Ombudsman makes a report relating to the Australian Federal Police or the National Crime Authority, a copy of that report is to be given to either the Commissioner of the Australian Federal Police or the Chairman of the National Crime Authority, respectively.

113. Proposed section 86 provides that where, as a result of an inspection, the Ombudsman has formed the opinion that an officer of the Australian Federal Police or the National Crime Authority has contravened a provision of the Act, other than proposed section 80, 81 or 82, the Ombudsman is permitted to include in the report on the inspection a report on the contravention.

114. Proposed section 87 sets out the general powers which may be exercised by the Ombudsman for the purpose of conducting an inspection of the records of the Australian Federal Police or the National Crime Authority. The Ombudsman may enter the premises occupied by those agencies at any reasonable time, is entitled to have full and free access at all reasonable times to the records of the agency, is entitled

to make copies of and to take extracts from such records of the agency to which the Ombudsman is entitled to have access, notwithstanding proposed section 63 or any other law, and may require an officer of the agency to give such information as the Ombudsman consider necessary, being information that is in the officer's possession, or to which the officer has access, and that is relevant to the inspection. Proposed sub-section 87(2) obliges the Commissioner of the Australian Federal Police and the Chairman of the National Crime Authority to ensure that their officers provide such assistance to the Ombudsman in connection with the performance or exercise of the Ombudsman's functions or powers under this Part as the Ombudsman reasonably requires.

115. Proposed section 88 provides for the Ombudsman to have powers to obtain relevant information from officers of the Australian Federal Police or the National Crime Authority. Proposed sub-section 88(1) provides that where the Ombudsman has reason to believe that an officer of an agency is able to give information relevant to an inspection of the agency's records, the powers set out in proposed sub-sections 88(2) and (3) have effect. Proposed sub-section 88(2) permits the Ombudsman to require the officer, by writing given to the officer, to give information to the Ombudsman by writing signed by the officer at a specified place and within a specified period. Proposed sub-section 88(3) permits the Ombudsman to require, by writing given to the officer, that officer to attend before a specified person, at a specified place and within a specified period or at a specified time on a specified day in order to answer questions relevant to the inspection. Proposed sub-section 88(4) provides that, where the Ombudsman has reason to believe that an officer of an agency is able to give information relevant to an inspection of the agency's records and the Ombudsman does not know the officer's identity, the Ombudsman may, by writing given to the chief officer of the agency, require the chief officer, or a person nominated by the chief officer, to attend before a specified person, at a specified place, and within a specified

period or at a specified time on a specified day in order to answer questions relevant to the inspection.

116. Proposed section 89 provides that, notwithstanding any other law, a person is not excused from giving information, answering a question, or giving access to a document, as and when required by or under this proposed Part, on the ground that so doing would contravene a law, would be contrary to public interest or might tend to incriminate the person or make the person liable to a penalty. This is to ensure that the normal legal restrictions which would apply to the giving of information, answering a question, or giving access to a document, relevant to the conduct of an inspection by the Ombudsman, do not apply to the Ombudsman in the exercise of the functions set out in proposed section 83. The person required to give information, answer a question, or give access to a document is protected by virtue of proposed sub-section 89(1) which provides that the information given, the answer given or the fact that the person has given access to a document is not admissible in evidence against the person except in a proceeding by way of a prosecution for an offence against proposed section 108. Proposed section 108 deals with offences relating to inspections under proposed Part VIII.

117. Proposed sub-section 89(2) provides that nothing in proposed section 63 or any other law prevents an officer of the Australian Federal Police or the National Crime Authority from giving information to an inspecting officer or giving an inspecting officer access to a record of the Australian Federal or the National Crime Authority respectively for the purpose of an inspection. The proposed definition of inspecting officer is contained in clause 5. Proposed section 63 provides that lawfully obtained information, or information obtained by intercepting a communication in contravention of sub-section 7(1), shall not be communicated, made use of, made a record of or given in evidence in a proceeding except in

accordance with the provisions of proposed Part VII. Contraventions of proposed section 63 are punishable in accordance with the provisions of proposed section 106.

118. Proposed sub-section 89(3) provides that nothing in proposed section 63 or any other law prevents an officer of the Australian Federal Police or the National Crime Authority from making, or causing to be made, a record of information for the purposes of giving the information in accordance with the provisions set out in proposed sub-section 89(2).

119. Proposed section 90 permits an inspecting officer, notwithstanding proposed section 63 or any other law, to communicate to another inspecting officer, use, or record, for the purposes of an inspection or a report on an inspection, information given or communicated to the inspecting officer as permitted by proposed sub-section 89(2) or this section or information that has been obtained as a result of access to the records of the Australian Federal Police or the National Crime Authority.

120. Proposed section 91 prevents an inspecting officer, or a person acting under such an officer's direction or authority, being liable to an action, suit or proceeding in connection with the performance or exercise in good faith of a function, power or authority conferred by proposed Part VIII. Proposed section 91 is subject to the provisions of the Ombudsman Act 1976 which are applied for the purposes of proposed Part VIII by the provisions of proposed sub-section 93(3).

121. Proposed section 92 permits the Ombudsman to delegate to a Deputy Commonwealth Ombudsman or to a member of the staff referred to in sub-section 31(1) of the Ombudsman Act 1976 any of the Ombudsman's powers under proposed Part VIII other than a power to report to the Minister and the power of delegation contained in this proposed section. Proposed sub-section 92(2) provides that when a power delegated in accordance with this proposed section is exercised by the delegate it shall,

for the purposes of proposed Part VIII, be deemed to have been exercised by the Ombudsman. Proposed sub-section 92(4) obliges a delegate to produce the instrument of delegation or a copy of such instrument for inspection when requested to do so by a person affected by the exercise of any power delegated to the delegate.

122. Proposed section 93 deals with the application of provisions of the Ombudsman Act 1976. Proposed sub-section 93(1) provides that section 11A of the Ombudsman Act does not apply to the exercise of a power or the performance of a function of the Ombudsman under proposed Part VIII. Section 11A deals with the circumstances where the Ombudsman or the Principal Officer of a Department or prescribed authority may make an application to the Federal Court of Australia for the determination of a question relating to the activities of the Ombudsman. Proposed sub-section 93(2) has the effect of ensuring that the requirements for the Ombudsman to report to the Minister contained in proposed Part VIII are kept separate from, and are independent of, the reporting requirements contained in section 19 of the Ombudsman Act. Proposed sub-section 93(3) applies appropriate elements of the secrecy obligations imposed on the Ombudsman, a Deputy Ombudsman and a member of the Ombudsman's staff to the activities of those persons conducted in pursuance of the provisions of proposed Part VIII. The proposed sub-section, and the application of those appropriate secrecy provisions, is subject to the provisions of proposed section 89.

PART IX - REPORTS ABOUT INTERCEPTIONS UNDER PARTS IV, V AND VI

Division 1 - Reports to the Minister

123. Proposed section 94 requires the Managing Director of Telecom to report to the Minister as soon as practicable after 30 June each year on interceptions carried out pursuant to the operation of section 30 during the preceeding year ending on that 30 June. Section 30 sets out procedures whereby

interceptions may be made in circumstances of emergencies involving the possibility of death or serious injury to a person. Reports made to the Minister by the Managing Director of Telecom in accordance with proposed section 94 are to be laid before each House of the Parliament in accordance with the requirements of proposed section 105.

124. Proposed section 95 provides for the Commissioner of the Australian Federal Police and the Chairman of the National Crime Authority to provide reports and information to the Minister. The reports and information required to be given to the Minister by proposed section 95 are to be used by the Minister in relation to the annual reports that are to be prepared by him, in accordance with proposed section 100, and laid before each House of the Parliament, in accordance with proposed section 105; and are also required so that the Minister may exercise continuous oversight on the operation of the scheme for conducting telecommunications interceptions. Proposed sub-section 95(1) requires the Commissioner of the Australian Federal Police and the Chairman of the National Crime Authority to give to the Minister a copy of each warrant issued to the Australian Federal Police and the National Crime Authority, respectively, and a copy of each instrument revoking any such warrant, as soon as is practicable. Proposed sub-section 95(2) requires the Commissioner of the Australian Federal Police and the Chairman of the National Crime Authority to give to the Minister, within three months after a warrant issued to the Australian Federal Police or the National Crime Authority, respectively, ceases to be in force a report on the use made by the Australian Federal Police or the National Crime Authority, respectively, of information obtained under the warrant and the communication of such information to persons other than officers of the Australian Federal Police or the National Crime Authority, respectively. Proposed sub-section 95(3) requires the Commissioner of the Australian Federal Police and the Chairman of the National Crime Authority to give to the Minister, as soon as practicable, and in any event within 2 months, after each

30 June, a report setting out such information as is required to be set out in the Minister's report relating to the year ending on that 30 June by the provisions of proposed Division 2 of proposed Part IX, which can be derived from the records of the Australian Federal Police and the National Crime Authority, respectively. Proposed sub-section 95(4) provides that the provisions relating to periodic reports contained in the section 34C of the Acts Interpretation Act 1901 do not apply in relation to a report given to the Minister by the Commissioner of the Australian Federal Police or the Chairman of the National Crime Authority in accordance with proposed sub-section 95(3).

125. Proposed section 96 permits the Minister to request further information from the Commissioner of the Australian Federal Police or the Chairman of the National Crime Authority, being information which is not contained in a report provided under proposed sub-section 95(3) and which is required by the Minister in connection with the preparing of a report under proposed Division 2. The Commissioner of the Australian Federal Police and the Chairman of the National Crime Authority are required to comply with such a request to the extent that it is practicable to do so.

126. Proposed section 97 provides that the chief officer of an eligible authority of a State (the proposed definitions of chief officer and eligible authority are contained in clause 5) shall, as soon as practicable, and in any event within 3 months, after each 30 June give to the Minister a report that sets out such information, if any, as is required by proposed section 103 to be set out in the Minister's report under proposed Division 2 relating to the year ending on that 30 June, which can be derived from the eligible authority's records. Proposed section 103 requires that the annual report to be made by the Minister shall contain information relating to the effectiveness of information obtained as a result of interceptions authorised by warrants, covering the numbers of arrests and proceedings by way of prosecution consequent in

whole or in part upon the use of such information. Proposed sub-section 97(2) provides that where a Minister of a State has given to the Minister a report in writing setting out the information required by proposed sub-section 97(1), the chief officer of an eligible authority of that State is not required to provide the report referred to in proposed sub-section 97(1).

127. Proposed section 98 requires the Managing Director of Telecom to give to the Minister, within 3 months after a warrant issued under section 20A, 20B, 45 or 46 ceases to be in force, a report concerning acts or things done by or in relation to officers of the Commission facilitating the execution of the warrant.

128. Proposed section 99 requires the Commissioner of the Australian Federal Police to give to the Minister, within 3 months after a warrant issued under proposed Part VI ceases to be in force, a report concerning acts or things done by or in relation to members of the Australian Federal Police in connection with interception communications under a warrant, including acts or things done to ensure discontinuance of interceptions under the warrant.

Division 2 - Reports by the Minister

129. Proposed section 100 provides for the Minister to cause annual reports to be prepared in accordance with the requirements of proposed Division 2.

130. Proposed sections 101, 102, 103 and 104 provide for the nature of the information that must be contained in annual reports prepared in accordance with proposed section 100. Proposed section 101 requires the report to contain details relating to applications made for warrants and warrants issued. It covers the relevant statistics on telephone applications for warrants under proposed Part VI, renewal

applications, applications for warrants under proposed Part VI that include requests for the warrant to authorise entry on premises, the number of warrants issued under proposed Part VI with specified conditions or restrictions, and the categories of the serious offences, and the numbers of such offences, specified in accordance with proposed sub-section 49(7). Proposed sub-section 101(1) requires the report to set out such information in relation to each Commonwealth agency and for each eligible authority of a State that was an agency at any time during the year under report; and proposed sub-section 101(2) requires the information to be set out in aggregate. In addition, proposed sub-section 101(3) requires the report to set out information about applications for warrants under Part IV. The proposed definitions of Commonwealth agency, eligible authority and relevant statistics are contained in clause 5.

131. Proposed section 102 requires the annual report prepared in accordance with proposed section 100 to contain information relating to the length of time warrants are in force. The information must include averages of the periods for which warrants issued under proposed Part VI were intended to be in force, periods during which such warrants were in force, periods during which warrants, issued under proposed Part VI and which are renewals of other warrants, were intended to remain in force, and periods during which such warrants did remain in force. The information also includes the number of 90 day, 150 day, and 180 day final renewals of warrants issued that ceased to be in force during the year of the report. This is to ensure that Parliament is made aware of the number of what are, in effect, single interception operations that remain effective for a period greater than 90 days. Proposed sub-section 102(1) requires the report to set out such information in relation to each Commonwealth agency and for each eligible authority of a State that was an agency at any time during the year under report; and proposed sub-section 102(2) requires the information to be set out in aggregate. Proposed sub-section 102(4) also requires the report to set

out averages for the periods for which warrants issued under Part IV were to be in force, and periods during which such warrants were in force. Proposed sub-section 102(3) defines a 90 day, 150 day, or 180 day final renewal. The proposed definition of renewal is contained in clause 5.

132. Proposed section 103 requires the annual report prepared in accordance with proposed section 100 to contain information covering the number of arrests made during the year on the basis, in whole or in part, of information obtained from an interception, the categories of prescribed offences proceedings by way of prosecutions which ended during that year, being proceedings in which lawfully obtained information was given in evidence, the number of such offences in each category, and the number of such offences in each category in respect of which convictions were recorded. Proposed sub-section 103(1) requires the report to set out such information in relation to each Commonwealth agency and for each eligible authority of a State that was an agency at any time during the year under report; and proposed sub-section 103(2) requires the information to be set out in aggregate. The proposed definitions of Commonwealth agency, eligible authority and prescribed offence are contained in clause 5.

133. Proposed section 104 requires the annual report prepared in accordance with proposed section 100 to set out such additional matters (if any) as are prescribed.

Division 3 - Provisions about Annual Reports

134. Proposed section 105 requires the Minister to cause a copy of a report made to him by the Managing Director of Telecom under proposed section 94, or a report prepared in accordance with the requirements of proposed Division 2, to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report, or the report is prepared. Neither report may be made in a way which is likely to enable the identification of a person.

PART X - OFFENCES

135. Proposed section 106 creates the offences of contravening sub-section 7(1) of the Principal Act and proposed section 63. The offences are indictable and are punishable on conviction by a fine not exceeding \$5000 or imprisonment not exceeding 2 years. Proposed sub-section 106(3) provides that a court of summary jurisdiction may hear and determine proceedings in respect of such an offence, if the proceedings are brought in the name of the Attorney-General or the Director of Public Prosecutions, the defendant and the prosecutor consent, and the court is satisfied that it is proper for the court to hear and determine proceedings in respect of that offence. Proposed sub-section 106(4) provides that where a court of summary jurisdiction, in accordance with proposed sub-section 106(3), convicts a person, the penalty that the court may impose is a fine not exceeding \$1000 or imprisonment for a period not exceeding 6 months.

136. Proposed section 107 creates the offence of obstructing or hindering, without reasonable excuse, a person acting under a warrant.

137. Proposed section 108 creates offences relating to the performance of the Ombudsman's functions or the exercise of his powers in relation to inspections under proposed Part VIII.

PART XI - REGULATIONS

138. Proposed section 109 contains a regulation making power.

Clauses 20 and 21 - Further amendments

139. These clauses make formal consequential amendments to the Principal Act, and the Australian Security Intelligence Organization Act 1979 and the National Crime Authority Act 1984, respectively.

1985-86-87

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(Amendments to be moved on behalf of the Government)

TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Lionel Bowen
M.P. Deputy Prime Minister and Attorney-General)

Notes on Amendments

Clause 8 - proposed section 6D

1. Proposed sub-section 6D(3) provides for declaration by the Minister, by notice in the Gazette, of Judges to be eligible Judges for the purposes of the legislation. The requirement that the declaration be by notice published in the Gazette may result in threats being made against eligible Judges. The amendments remove this requirement, substituting a requirement that the Minister may, by writing, declare Judges to be eligible Judges.

Clause 21 - proposed section 54

2. Proposed section 54 deals with when a warrant, other than a warrant issued to the Australian Federal Police, comes into force. Under the proposed section, warrants or notifications would have to be received by the Commissioner of Police. The amendments change this so that a warrant will come into force when the warrant or, in the case of a warrant issued on a telephone application, a notification under paragraph 53(1)(b), is received by or on behalf of the Commissioner of Police.

Clause 21 - proposed section 59

3. In line with the amendment to proposed section 54, proposed section 59 is the subject of amendment so that a warrant does not cease to be in force until the instrument of revocation is received by or on behalf of the Commissioner of Police.

Clause 21 - proposed section 88

4. Under proposed sub-sections 88(2), (3) and (4), the Ombudsman may require an officer of an agency to give information or attend before an inspecting officer. The provisions do not stipulate that the place and period or the time and day specified by the Ombudsman must be reasonable. The amendments correct this by inserting a new sub-section 88(5) providing that a requirement under section 88 shall be reasonable having regard to the circumstances in which the requirement is made.

Clause 21 - proposed section 89

5. Proposed sub-section 89(1) provides, in effect, that a person is not excused from giving information to the Ombudsman on the ground that doing so would contravene a law, be contrary to the public interest, tend to incriminate the person or make the person liable to a penalty, but the information given is not admissible in evidence against the person except in a prosecution for an offence against proposed section 108. However, this provision does not protect the person giving the information from any information or thing acquired as a direct or indirect consequence of the person being required to give the information. The amendment amends the provision to correct this.

1985-86-87

HOUSE OF REPRESENTATIVES

TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT
BILL 1987

(Amendments to be moved by Mr Spender)

- (1) Clause 5, page 3, lines 43 and 44, and page 4, lines 1-12, omit paragraph (a) of the definition of "class 2 offence", substitute the following paragraph:
"(a) an offence punishable by not less than 3 years imprisonment;"
- (2) Clause 21, page 33, lines 37 and 38, omit
"; or (b) give in evidence in a proceeding;"
- (3) Clause 21, page 34, omit proposed section 64.
- (4) Clause 21, page 37, proposed section 74, lines 33 and 34, omit "64 or".
- (5) Clause 21, pages 37 and 38, omit proposed sub-section 75(2).
- (6) Clause 21, page 38, omit proposed section 76.
- (7) Clause 21, pages 38 and 39, omit proposed section 78.

1985-86-87

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 1987

SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE

No. 1 - Page 34, clause 21, proposed section 64, lines 1 to 23,
leave out the proposed section.

No. 2 - Page 37, clause 21, proposed section 74, lines 33 and 34,
leave out "64 or".

A.R. CUMMING THOM
Clerk of the Senate

The Senate,
Canberra, 4 June 1987