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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Telecommunications (Interception)
Amendment Bill 2004**

No. , 2004

(Attorney-General)

**A Bill for an Act to amend the *Telecommunications
(Interception) Act 1979*, and for other purposes**

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1 **A Bill for an Act to amend the *Telecommunications***
2 ***(Interception) Act 1979, and for other purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Telecommunications (Interception)*
6 *Amendment Act 2004.*

7 **2 Commencement**

8 This Act commences on the day after it receives the Royal Assent.

9 **3 Schedule(s)**

10 Each Act that is specified in a Schedule to this Act is amended or
11 repealed as set out in the applicable items in the Schedule

1
2

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Telecommunications (Interception) Act 1979

1 Subsection 5(1) (after paragraph (ca) of the definition of class 1 offence)

Insert:

(cb) an offence against Division 72, 101, 102 or 103 of the *Criminal Code*; or

2 Subsection 5(1) (paragraph (d) of the definition of class 1 offence)

Omit “or (ca)”, substitute “, (ca) or (cb)”.

3 Subparagraph 5D(3)(d)(x)

Repeal the subparagraph, substitute:

(x) dealings in firearms or armaments;

4 Subsection 5D(5)

Repeal the subsection, substitute:

Cybercrime offences etc.

(5) An offence is also a *class 2 offence* if it is an offence against any of the following provisions:

- (a) Part 10.7 of the *Criminal Code*;
- (b) section 308C, 308D, 308E, 308F, 308G, 308H or 308I of the *Crimes Act 1900* of New South Wales;
- (c) section 247B, 247C, 247D, 247E, 247F, 247G or 247H of the **Crimes Act 1958** of Victoria;
- (d) a provision of a law of a State (other than New South Wales or Victoria) that corresponds to a provision covered by paragraph (a), (b) or (c);
- (e) a provision of a law of a Territory that corresponds to a provision covered by paragraph (a), (b) or (c);
- (f) section 440A of *The Criminal Code* of Western Australia.

5 Subsection 6(1)

1 Omit “or recording”, substitute “, recording, reading or viewing”.

2 **6 Subsection 6(2)**

3 Omit “or records” (wherever occurring), substitute “, records, reads or
4 views”.

5 **7 Subsection 6(2)**

6 Omit “or recording”, substitute “, recording, reading or viewing”.

7 **8 Subsection 6(2B)**

8 Omit “or records”, substitute “, records, reads or views”.

9 **9 Subsection 6(2B)**

10 Omit “or recording”, substitute “, recording, reading or viewing”.

11 **10 At the end of section 6**

12 Add:

13 *Communications to publicly-listed ASIO numbers*

14 (3) In this section, a *publicly-listed ASIO number* is a telephone
15 number that:

16 (a) enables members of the public to contact the Organisation;
17 and

18 (b) is listed in:

19 (i) a telephone directory; or

20 (ii) a telephone number database;

21 that is available to the public.

22 (4) If:

23 (a) a person makes a call to a publicly-listed ASIO number; and

24 (b) another person who is lawfully engaged in duties relating to
25 the receiving and handling of communications to that number
26 listens to, records, reads or views a communication passing
27 over a telecommunications system in the course of that call;

28 the listening, recording, reading or viewing does not, for the
29 purposes of this Act, constitute the interception of the
30 communication.

1 *Delayed access message services—access to stored*
2 *communications*

- 3 (5) In this section, a ***delayed access message service*** is a means by
4 which a communication intended for a person can be:
5 (a) submitted without the person being in direct contact with
6 anyone submitting the communication; and
7 (b) subsequently accessed by the person (whether or not other
8 persons might also be able to access it);
9 but does not include a service for the carriage of communications
10 by way of voice over Internet protocol.

11 Note: Some common examples of delayed access message services are
12 e-mail services and voice mail services.

- 13 (6) In this section, a ***stored communication*** is a communication that:
14 (a) has been submitted using a delayed access message service;
15 and
16 (b) is stored on equipment.
- 17 (7) For the purposes of this section, a stored communication that is
18 intended for a person (the ***intended recipient***) is taken not to be
19 passing over a telecommunications system:
20 (a) when it is accessed by or with the authority of the intended
21 recipient; or
22 (b) when it is accessed by another person at any time after it is
23 accessed by or with the authority of the intended recipient, so
24 long as it is accessed by the other person without using a
25 telecommunications service or any other form of remote
26 access, unless the use of the telecommunications service or
27 the other form of remote access, as the case may be, is
28 merely for the purpose of, or an incidental result of:
29 (i) turning on equipment; or
30 (ii) obtaining power required to operate equipment; or
31 (iii) any other action prescribed by regulations for the
32 purposes of this subparagraph; or
33 (c) when it is accessed by another person using:
34 (i) any or all of the equipment which the intended recipient
35 could have used to access the stored communication; or
36 (ii) any or all of the equipment mentioned in
37 subparagraph (i) in combination with other equipment;

1 so long as it is accessed by the other person without using a
2 telecommunications service or any other form of remote
3 access, unless the use of the telecommunications service or
4 the other form of remote access, as the case may be, is
5 merely for the purpose of, or an incidental result of:
6 (iii) turning on equipment; or
7 (iv) obtaining power required to operate equipment; or
8 (v) any other action prescribed by regulations for the
9 purposes of this subparagraph.

10 Note: The heading to section 6DA is altered by omitting “for use of listening devices”.

11 **11 Transitional—pre-commencement warrants**

- 12 (1) This item applies to a warrant that was in force immediately before the
13 commencement of this item.
- 14 (2) In determining whether an act or thing done after the commencement of
15 this item falls within the scope of the interceptions authorised by the
16 warrant, apply section 6 of the *Telecommunications (Interception) Act*
17 *1979* as amended by this Schedule.

18 **12 At the end of paragraph 15(1A)(b)**

19 Add “and”.

20 **13 After paragraph 15(1A)(b)**

21 Insert:

- 22 (ba) the execution of the warrant will involve the taking of action
23 by the carrier or its employees;

24 **14 At the end of paragraph 15(4)(b)**

25 Add “and”.

26 **15 After paragraph 15(4)(b)**

27 Insert:

- 28 (ba) the execution of the warrant will involve the taking of action
29 by the carrier or its employees;

30 **16 Subsection 55(5)**

31 Omit “subsections (1) and (2)”, substitute “subsection (1)”.

1 **17 Paragraph 60(5)(b)**

2 After “issued”, insert “, or a certifying officer of that agency,”.

3 **18 Subsection 60(5)**

4 After “the chief officer” (last occurring), insert “or the certifying
5 officer”.