



Telecommunications Interception Act 2009

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Queensland

Telecommunications Interception Act 2009

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Telecommunications Interception Act 2009

An Act to enhance law enforcement in Queensland by enabling the Queensland Police Service and the Crime and Corruption Commission to be declared agencies under the Telecommunications (Interception and Access) Act 1979 (Cwth)

Part 1 Preliminary

1 Short title

This Act may be cited as the *Telecommunications Interception Act 2009*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Dictionary

The dictionary in the schedule defines particular words used in this Act.

4 Meaning of expressions used in Commonwealth Act

Unless the contrary intention appears, a word or expression used in this Act that is not defined in this Act has the meaning given by the Commonwealth Act.

5 Objective

- (1) The main objective of this Act is to enable the use by the police service and the CCC of telecommunications interception as a tool for the investigation of serious offences.
- (2) The main objective is to be achieved by establishing a recording, reporting and inspection regime required under the Commonwealth Act for the Commonwealth Minister to be able to declare the police service and the CCC to be agencies under the Commonwealth Act.

Part 2 Notification to and appearance of PIM

6 Application of pt 2

This part applies if an officer of an eligible authority intends to apply under the Commonwealth Act for a part 2-5 warrant.

7 PIM must be notified

- (1) The officer must notify the PIM of the application under arrangements decided by the PIM.
- (2) If the officer intends to make the application in writing, the officer must give the PIM—
 - (a) a copy of the written application; and
 - (b) a copy of the affidavit required under section 42 of the Commonwealth Act to accompany the written application.
- (3) If the officer intends to make the application by telephone, the officer must give the PIM the information required under section 43 of the Commonwealth Act to be given on a telephone application.

8 Full disclosure to PIM

The officer must also fully disclose to the PIM all matters of which the officer is aware, both favourable and adverse to the issuing of the warrant.

9 PIM to be given further information

If further information is required under section 44 of the Commonwealth Act to be given to the eligible Judge or nominated AAT member in connection with the application, the officer must also give the PIM the information.

10 PIM entitled to appear

- (1) The PIM is entitled to appear at the hearing of the application to test the validity of the application and, for that purpose at the hearing, to—
 - (a) ask questions of any person giving information to the eligible Judge or nominated AAT member; and
 - (b) make submissions to the eligible Judge or nominated AAT member about the following matters—
 - (i) in relation to an application for a warrant in relation to a telecommunications service—the matters mentioned in section 46(2)(a) to (f) of the Commonwealth Act;
 - (ii) in relation to an application for a warrant in relation to a person—the matters mentioned in section 46A(2)(a) to (f) of the Commonwealth Act.
- (2) Without limiting subsection (1), the PIM is entitled to make submissions to the eligible Judge or nominated AAT member in the presence of the eligible Judge or nominated AAT member, or by phone, fax, email or any other reasonable way.
- (3) As soon as practicable after the application is heard, the PIM must return to the officer any documents given by the officer to the PIM under section 7, 8 or 9 in relation to the application.

11 Confidentiality obligations not to apply

- (1) This section applies to—
 - (a) an officer of an eligible authority; and
 - (b) a person mentioned in section 10(1)(a).
- (2) An obligation to maintain secrecy in relation to, or that otherwise restricts, the disclosure of information or the production of documents in the possession of the person, whether imposed under an Act or by a rule of law, does not apply to the disclosure of information or the production of a document under this part.

12 PIM to report to Minister about noncompliance

- (1) Whenever the PIM considers it appropriate, the PIM may give the Minister a report on noncompliance by an eligible authority with this Act or the Commonwealth Act.
- (2) The report must not contain information mentioned in section 63 of the Commonwealth Act.
- (3) The PIM must give a copy of the report to—
 - (a) if the eligible authority is the CCC—the parliamentary commissioner and the parliamentary committee; or
 - (b) if the eligible authority is the police service—the Police Minister.

13 Relationship of provisions of other Acts to PIM and deputy PIMs

- (1) The *Police Powers and Responsibilities Act 2000*, section 740 and the *Crime and Corruption Act 2001*, section 324 provide for the appointment of a PIM and 1 or more deputy PIMs (each an **appointment provision** of an **appointment Act**).
- (2) However, despite the functions and powers of a PIM or deputy PIM mentioned in an appointment provision or any other provision of an appointment Act—

- (i) each authorisation by the chief officer, or an authorising officer of the eligible authority, given under section 66(2) of the Commonwealth Act.

15 Other records to be kept by eligible authority in connection with interceptions

- (1) The chief officer of an eligible authority must cause to be recorded in writing—
 - (a) particulars of each telephone application for a part 2-5 warrant made by the authority, including, for example, particulars of—
 - (i) the information given to the eligible Judge or nominated AAT member on the application; and
 - (ii) the further information, if any, required by the eligible Judge or nominated AAT member to be given in connection with the application; and
 - (b) for each application by the authority for a part 2-5 warrant, a statement as to whether—
 - (i) the application was withdrawn or refused; or
 - (ii) a warrant was issued on the application; and
 - (c) for each part 2-5 warrant whose authority is exercised by the eligible authority, particulars of—
 - (i) the warrant; and
 - (ii) the day and time each interception under the warrant began; and
 - (iii) how long each interception lasted; and
 - (iv) the name of the person who carried out each interception; and
 - (v) for a named person warrant—each service to or from which communications have been intercepted under the warrant; and
 - (d) for each restricted record that has at any time been in the authority's possession, particulars of—

- (i) if the restricted record is a record obtained by an interception under a warrant issued to the authority—that warrant; and
 - (ii) each occasion when the restricted record came, whether by its making or otherwise, to be in the authority's possession; and
 - (iii) each occasion, if any, when the restricted record stopped, whether by its destruction or otherwise, being in the authority's possession; and
 - (iv) each other agency or other body, if any, from or to which, or other person, if any, from or to whom, the authority received or supplied the restricted record; and
- (e) particulars of each use made by the authority of lawfully intercepted information; and
 - (f) particulars of each communication by an officer of the authority to a person or body other than an officer of the authority of lawfully intercepted information; and
 - (g) particulars of each occasion when, to the knowledge of an officer of the authority, lawfully intercepted information was given in evidence in a relevant proceeding in relation to the authority.
- (2) The record must be made as soon as practicable after the happening of the events to which the particulars relate or the statement relates.
 - (3) If a part 2-5 warrant is a named person warrant, the particulars mentioned in subsection (1)(c)(ii) must indicate the service in relation to which each interception happened.
 - (4) The chief officer of an eligible authority must cause to be kept in the authority's records each record that the chief officer has caused to be made under this section.

16 Documents to be given by eligible authority to State Minister

The chief officer of an eligible authority must give the Minister—

- (a) within 3 months after a warrant issued to the authority stops being in force, a written report about—
 - (i) the use made by the authority of information obtained by interceptions under the warrant; and
 - (ii) the communication of that information to persons other than officers of the authority; and
- (b) as soon as practicable, and in any event within 3 months after each 30 June, a written report that sets out the information that—
 - (i) part 2-8, division 2 of the Commonwealth Act requires to be set out in the Commonwealth Minister's report under part 2-8, division 2 for the year ending on that 30 June; and
 - (ii) can be derived from the authority's records.

17 Documents to be given by State Minister to Commonwealth Minister

- (1) The Minister must give the Commonwealth Minister a copy of a report mentioned in section 16(a) or (b).
- (2) The copy of the report must be given to the Commonwealth Minister as soon as practicable after it is given to the Minister.

18 Keeping of restricted records by eligible authority

The chief officer of an eligible authority must cause a restricted record in the possession of the authority to be kept, other than when it is being otherwise dealt with under the Commonwealth Act and this Act, in a secure place where it is not accessible to persons other than persons who are entitled to deal with it.

19 Destruction of restricted records by eligible authority

- (1) Subject to section 20, the chief officer of an eligible authority must cause a restricted record of a type mentioned in section 18 to be destroyed immediately if the chief officer is satisfied the restricted record is not likely to be required for a permitted purpose in relation to the eligible authority.
- (2) For subsection (1), a permitted purpose does not include a purpose connected with—
 - (a) an inspection of a type mentioned in section 22(1)(a); or
 - (b) a report on an inspection of a type mentioned in section 22(1)(a).

20 Commonwealth Minister and inspecting entity to inspect restricted record before destruction

The chief officer of an eligible authority must not cause a restricted record to be destroyed under section 19 unless—

- (a) the chief officer has received from the secretary of the Commonwealth department written notice that the entry in the general register relating to the warrant under which the restricted record was obtained has been inspected by the Commonwealth Minister; and
- (b) the chief officer first—
 - (i) notifies the eligible authority's inspecting entity that the chief officer intends to destroy the record; and
 - (ii) gives the inspecting entity the opportunity to inspect the record.

- (a) the deputy PIM is not acting under a delegation of the PIM; and
 - (b) the deputy PIM is taken to be the inspecting entity.
- (4) A deputy PIM must, if asked by a person affected by the exercise of a power by the deputy PIM under this part, produce the instrument of nomination, or a copy of the instrument, for the person's inspection.

23 Regular inspections of eligible authority's records

- (1) The inspecting entity must inspect the eligible authority's records at least once before the end of the financial year in which the eligible authority is declared to be an agency under the Commonwealth Act to find out the extent to which the authority's officers have complied with sections 14 to 16 and 18 to 20 since the commencement of this Act.
- (2) After the financial year mentioned in subsection (1), the inspecting entity must inspect the eligible authority's records at least twice during each financial year to find out the extent to which the authority's officers have complied with sections 14 to 16 and 18 to 20 since the inspecting entity last inspected the authority's records under this part.
- (3) The inspecting entity may at any time inspect the eligible authority's records to find out the extent to which the authority's officers have complied with sections 14 to 16 and 18 to 20 during any period.

24 Reports to Minister

- (1) The inspecting entity, as soon as practicable, and in any event within 3 months after the end of each financial year, must report to the Minister in writing, in relation to the eligible authority, about the results of an inspection under section 23 of the authority's records to find out the extent to which the authority's officers have complied with sections 14, 15, 18 and 19.

- (2) The inspecting entity must include in each report under subsection (1) in relation to a financial year—
 - (a) a summary of the inspections conducted in the financial year under section 23; and
 - (b) particulars of any deficiencies identified that impact on the integrity of the telecommunications interception regime established by the Commonwealth Act; and
 - (c) particulars of the remedial action, if any, taken or proposed to be taken to address those deficiencies.

Note—

In complying with this section, the inspecting entity remains bound by the obligations imposed by section 63 of the Commonwealth Act relating to disclosure of intercepted information or interception warrant information.

- (3) The inspecting entity may report to the Minister in writing at any time about the results of an inspection under this part and must do so if requested by the Minister.
- (4) The inspecting entity must give the information in a report mentioned in subsection (1) or (3), other than information mentioned in section 63 of the Commonwealth Act, to—
 - (a) the chief officer of the eligible authority; and
 - (b) if the eligible authority is the CCC—the parliamentary committee; and
 - (c) if the eligible authority is the police service—the Police Minister.

25 Inspecting entity may report on other contraventions

- (1) If, because of an inspection under this part of an eligible authority's records, the inspecting entity considers an officer of the authority has contravened the Commonwealth Act or that the chief officer of the authority has contravened section 16 or 20 of this Act, the inspecting entity may include a report on the contravention in the report on the inspection.

- (2) However, before making a report on the contravention, the inspecting entity must give the chief officer of the eligible authority an opportunity to make comments in writing on the report and must include in the report any comments made.

26 Inspecting entity's general powers for inspections

- (1) For an inspection under this part of an eligible authority's records, the inspecting entity—
 - (a) may, after notifying the chief officer of the authority, enter at any reasonable time premises occupied by the authority; and
 - (b) is entitled to have full and free access at all reasonable times to all records of the authority; and
 - (c) despite any other law, may make copies of, and take extracts from, records of the authority; and
 - (d) may require an officer of the authority to give the inspecting entity the information the inspecting entity considers necessary, being information that is in the officer's possession, or to which the officer has access, and that is relevant to the inspection.
- (2) The chief officer of the eligible authority must ensure that the authority's officers give the inspecting entity the help in connection with the performance of the inspecting entity's functions under this part that the inspecting entity reasonably requires.

27 Inspecting entity's power to obtain relevant information

- (1) Subsections (2) and (3) apply if the inspecting entity has reason to believe that an officer of the eligible authority is able to give information relevant to an inspection under this part of the eligible authority's records.
- (2) The inspecting entity may, by writing given to the officer, require the officer to give the information to the inspecting entity—

- (a) by writing signed by the officer; and
 - (b) at a stated place and within a stated period.
- (3) The inspecting entity may, by writing given to the officer, require the officer to attend—
- (a) before the inspecting entity; and
 - (b) at a stated place; and
 - (c) within a stated period or at a stated time on a stated day; to answer questions relevant to the inspection.
- (4) Subsection (5) applies if the inspecting entity has reason to believe that an officer of the eligible authority is able to give information relevant to an inspection under this part of the eligible authority's records but the inspecting entity does not know the officer's identity.
- (5) The inspecting entity may, by writing given to the chief officer of the authority, require the chief officer, or a person nominated by the chief officer, to attend—
- (a) before the inspecting entity; and
 - (b) at a stated place; and
 - (c) within a stated period or at a stated time on a stated day; to answer questions relevant to the inspection.
- (6) The place, the period or the time and day, stated in a requirement under this section must be reasonable, having regard to the circumstances in which the requirement is made.

28 Inspecting entity to be given information and access despite other laws

- (1) Despite any other law, a person is not excused from giving information, answering a question, or giving access to a document, as and when required under this part, on the ground that giving the information, answering the question, or giving access to the document—
- (a) would contravene a law; or

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- (b) would be contrary to the public interest; or
 - (c) might tend to incriminate the person or make the person liable for a penalty.
- (2) However—
- (a) the information, the answer, or the fact that the person has given access to the document; and
 - (b) any information or thing, including a document, obtained as a direct or indirect consequence of giving the information, answering the question or giving access to the document;

is not admissible in evidence against the person other than in a prosecution for an offence against section 35.

- (3) Nothing in any other law prevents an officer of an eligible authority from—
- (a) giving information to the inspecting entity, whether orally or in writing and whether or not in answer to a question; or
 - (b) giving the inspecting entity access to a record of the authority;

for an inspection under this part of the authority's records.

- (4) Nothing in any other law prevents an officer of an eligible authority from making a record of information, or causing a record of information to be made, for the purposes of giving the information to a person as permitted by subsection (3).

29 Dealing with information for purposes of inspection and report

If—

- (a) information is given to the inspecting entity, as permitted by section 28(3) or this section, for an inspection, or for a report on an inspection, under this part of an eligible authority's records; or

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- (b) the inspecting entity obtains information because of being given access to a record of the eligible authority, as permitted by section 28(3), for an inspection under this part of an authority's records;

the inspecting entity may, despite any other law, give to another inspecting entity, make use of, or make a record of, the information for an inspection, or for a report on an inspection, under this part of the authority's records.

30 Exchange of information between inspecting entity and Commonwealth ombudsman

- (1) The inspecting entity may give the Commonwealth ombudsman information that—
 - (a) relates to a Commonwealth agency; and
 - (b) was obtained by the inspecting entity under this Act.
- (2) The inspecting entity may give information to the Commonwealth ombudsman under subsection (1) only if the inspecting entity is satisfied the giving of the information is necessary to enable the ombudsman to perform the ombudsman's functions in relation to the Commonwealth agency.
- (3) The inspecting entity may receive from the Commonwealth ombudsman information relevant to the performance of the inspecting entity's functions under this Act.

Part 5 Miscellaneous

31 Copies of reports for Commonwealth Minister

As soon as practicable after a report is given to the Minister under section 24(1), the Minister must give the Commonwealth Minister a copy of the report.

32 Delegation by parliamentary commissioner

- (1) The parliamentary commissioner may delegate any of the parliamentary commissioner's powers under this Act to a legal practitioner engaged by the Speaker under the *Crime and Corruption Act 2001*, section 315(2).
- (2) A delegate must, if asked by a person affected by the exercise of a power delegated to the delegate, produce the instrument of delegation, or a copy of the instrument, for the person's inspection.
- (3) To remove any doubt, and without limiting the power of the parliamentary commissioner to delegate under this section, a reference in sections 27(3)(a) and (5)(a), 28(3) and 29 to the parliamentary commissioner includes a reference to a legal practitioner acting under a delegation.

33 Delegation by PIM

- (1) The PIM may delegate to a deputy PIM any of the PIM's powers under this Act, other than a power to report to the Minister.
- (2) A delegate must, if asked by a person affected by the exercise of a power delegated to the delegate, produce the instrument of delegation, or a copy of the instrument, for the person's inspection.
- (3) To remove any doubt, and without limiting the power of the PIM to delegate under this section, a reference in sections 14(d), 27(3)(a) and (5)(a), 28(3) and 29 to the PIM includes a reference to a deputy PIM acting under a delegation.
- (4) This section is subject to section 22(3).

34 General confidentiality provision

- (1) A person must not disclose any information or record obtained by the person because he or she is or was engaged in the administration of this Act, unless the disclosure is made—

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- (a) under the Commonwealth Act; or
- (b) for the discharge of the person's functions under this Act; or
- (c) to the PIM for the discharge of the PIM's functions under part 2; or
- (d) to an inspecting entity for the discharge of the inspecting entity's functions under part 4.

Maximum penalty—100 penalty units or 2 years imprisonment.

Note—

See also sections 63 (No dealing in intercepted information or interception warrant information) and 105 (Contravention of section 7 or 63) of the Commonwealth Act.

- (2) Subsection (1) applies despite the provisions of another Act that may allow a person to disclose the information or a record obtained by the person because he or she is or was engaged in the administration of the other Act.
- (3) Subsection (1) does not apply to information received—
 - (a) from the PIM under section 12; or
 - (b) from an inspecting entity under section 24(4).
- (4) In this section—

disclose, in relation to any information or record, includes communicate to another person, make use of, make a record of, or give in evidence in a proceeding.

35 Offences relating to inspections under pt 4

- (1) A person must not, without reasonable excuse, refuse or fail to do any of the following when required to do so under section 27—
 - (a) attend before a person;
 - (b) give information;
 - (c) answer a question.

Maximum penalty—20 penalty units or 6 months imprisonment.

- (2) A person must not—
- (a) without reasonable excuse, wilfully obstruct a person in connection with the exercise of the inspecting entity's functions under part 4; or
 - (b) give the inspecting entity, in connection with an inspection under part 4, information or a statement that the person knows to be false or misleading in a material particular.

Maximum penalty—20 penalty units or 6 months imprisonment.

- (3) A complaint for an offence against subsection (2)(b) may state that information or a statement was 'false or misleading', without stating which.

36 Proceeding for offence

- (1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.
- (2) A proceeding may be started within—
- (a) 1 year after the offence is committed; or
 - (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

37 Protection from liability etc.

- (1) This section applies to the following persons—
- (a) the PIM;
 - (b) a deputy PIM;
 - (c) a parliamentary commissioner officer;
 - (d) a legal practitioner mentioned in section 32(1).

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- (2) The person does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (3) If subsection (2) prevents a civil liability attaching to a person, the liability instead attaches to the State.
- (4) The person may not be called to give evidence or produce any document in any court, or in any judicial proceedings, in relation to any matter coming to the person's knowledge while performing functions under this Act.
- (5) In this section—
parliamentary commissioner officer means—
 - (a) the parliamentary commissioner; or
 - (b) an officer or employee of the parliamentary service assigned to the parliamentary commissioner; or
 - (c) a person engaged to provide the parliamentary commissioner with services, information or advice.

38 Application of Judicial Review Act 1991 to decisions made under Act

- (1) The *Judicial Review Act 1991* does not apply to a decision made, or purportedly made, under this Act.
- (2) Nothing in subsection (1) affects the *Judicial Review Act 1991*, section 41 or 42.
- (3) In this section—
decision includes a decision affected by jurisdictional error.

39 Application of Public Records Act 2002 to particular activities and records

The *Public Records Act 2002* does not apply to an activity or a record under parts 2 to 4 or section 31.

40 Regulation-making power

The Governor in Council may make regulations under this Act.

Schedule Dictionary

section 3

Note—

See section 4 (Meaning of expressions used in Commonwealth Act).

CCC means the Crime and Corruption Commission.

chief officer, of an eligible authority, means—

- (a) for the CCC—the chairperson of the commission; or
- (b) for the police service—the police commissioner.

Commonwealth Act means the *Telecommunications (Interception and Access) Act 1979* (Cwlth).

Commonwealth Minister means the Minister administering the Commonwealth Act.

deputy PIM means a person appointed as a deputy public interest monitor under—

- (a) the *Police Powers and Responsibilities Act 2000*; or
- (b) the *Crime and Corruption Act 2001*.

eligible authority means—

- (a) the CCC; or
- (b) the police service.

inspecting entity, for an eligible authority, means—

- (a) for the CCC—the parliamentary commissioner; or
- (b) for the police service—the PIM.

in the possession of, in relation to a document, record or copy, includes in the custody or under the control of.

lawfully intercepted information means lawfully intercepted information under section 6E of the Commonwealth Act.

obstruct includes the following—

- (a) hinder or resist;

(b) attempt to obstruct.

officer, of an eligible authority, means—

(a) generally—

(i) for the CCC—a commission officer under the *Crime and Corruption Act 2001*; or

(ii) for the police service—a police officer; or

(b) for part 4—see section 21.

parliamentary commissioner means the parliamentary commissioner under the *Crime and Corruption Act 2001*.

parliamentary committee means the Parliamentary Crime and Corruption Committee of the Legislative Assembly under the *Crime and Corruption Act 2001*.

part 2-5 warrant means a warrant issued under part 2-5 of the Commonwealth Act.

PIM means the public interest monitor.

police commissioner means the commissioner of the police service under the *Police Service Administration Act 1990*.

Police Minister means the minister administering the *Police Service Administration Act 1990*.

police service means the Queensland Police Service.

possession includes the following—

(a) custody;

(b) control.

premises see section 5 of the Commonwealth Act.

public interest monitor means the person appointed as the public interest monitor under—

(a) the *Police Powers and Responsibilities Act 2000*; or

(b) the *Crime and Corruption Act 2001*.

record see section 5 of the Commonwealth Act.

relevant proceeding means a relevant proceeding under section 6L of the Commonwealth Act.

serious offence means a serious offence under section 5D of the Commonwealth Act.

warrant means a warrant issued under the Commonwealth Act.