

South Australia

## Telecommunications (Interception) Act 2012

An Act for enabling SA Police and the Independent Commissioner Against Corruption to be declared agencies for the purposes of the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth; to repeal the *Telecommunications (Interception) Act 1988*; and for other purposes.

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Schedule 1—Repeal of *Telecommunications (Interception) Act 1988*

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**The Parliament of South Australia enacts as follows:**

#### 1—Short title

This Act may be cited as the *Telecommunications (Interception) Act 2012*.

#### 2—Interpretation

- (1) In this Act—

**chief officer** of an eligible authority means—

- (a) for SA Police—the Commissioner of Police; or
- (b) for the Independent Commissioner Against Corruption—the Independent Commissioner Against Corruption;

**Commonwealth Act** means the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth;

**eligible authority** means—

- (a) SA Police; or
- (b) the Independent Commissioner Against Corruption;

**Independent Commissioner Against Corruption** means the person holding or acting in the office of the Independent Commissioner Against Corruption under the *Independent Commissioner Against Corruption Act 2012*;

***in the possession of***, in relation to a record, includes in the custody of or under the control of;

***officer*** of an eligible authority means—

- (a) for SA Police—a police officer or a police officer (however described) of another jurisdiction seconded to SA Police; or
- (b) for the Independent Commissioner Against Corruption—an investigator under the *Independent Commissioner Against Corruption Act 2012*;

***premises*** includes—

- (a) land; and
- (b) a structure, building, aircraft, vehicle, vessel or place (whether built on or not); and
- (c) part of such a structure, building, aircraft, vehicle, vessel or place;

***restricted record*** means a record (other than a copy) obtained by means of an interception, whether or not in contravention of section 7(1) of the Commonwealth Act, of a communication passing over a telecommunications system;

***review agency*** for an eligible authority means—

- (a) for SA Police—the Police Ombudsman; or
- (b) for the Independent Commissioner Against Corruption—a person who is independent of the Commissioner and is appointed by the Governor as the review agency;

***SA Police*** means South Australia Police;

***warrant*** means a warrant issued or to be issued to an eligible authority under Part 2-5 of the Commonwealth Act.

- (2) Expressions not defined in subsection (1) but defined in the Commonwealth Act have, in this Act, the same meaning as in the Commonwealth Act.

### **3—Obligations of chief officer of eligible authority relating to records**

- (1) The chief officer of an eligible authority must—
  - (a) record in writing particulars corresponding to those required to be recorded by the chief officer of a Commonwealth agency under section 81 of the Commonwealth Act as soon as practicable after the event to which they relate occurs; and
  - (b) keep, in the authority's records, records corresponding to those required to be kept by the chief officer of a Commonwealth agency in the agency's records under sections 80 and 81 of the Commonwealth Act; and
  - (c) cause a restricted record that is in the possession of the authority to be kept in a secure place (except while it is being dealt with in accordance with this Act or the Commonwealth Act), being a place that is not accessible to persons other than those who are entitled to deal with the record; and
  - (d) cause any such restricted record to be destroyed immediately if the chief officer is satisfied that the record is not likely to be required for a permitted purpose in relation to the eligible authority.

- (2) Subsection (1) applies to a restricted record whether made before or after the commencement of section 35 of the Commonwealth Act, but does not apply to a restricted record that is a record of a communication intercepted under section 7(2)(aaa) of the Commonwealth Act.
- (3) For the purposes of subsection (1)(d), the definition of a permitted purpose in the Commonwealth Act is to be read as if it does not include an inspection by a review agency under section 5 or a report on the results of such an inspection and, consequently, a restricted record may be destroyed even though it has not been inspected.

#### **4—Obligations of chief officer of eligible authority to report to Attorney-General**

The chief officer of an eligible authority must give to the Attorney-General—

- (a) within 3 months after a warrant issued to the authority ceases to be in force, a written report of—
  - (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 (but not later than 3 months) after each 30 June, a written report that sets out such information as Part 2-8 Division 2 of the Commonwealth Act requires to be set out in the Commonwealth Minister's report under that Division relating to the year ending on that 30 June as can be derived from the records of the authority.

#### **5—Obligations and powers of review agency**

- (1) The review agency for an eligible authority—
  - (a) must, at least once in each period of 6 months, inspect the records of the eligible authority for the purpose of ascertaining the extent of compliance with section 3; and
  - (b) must, not later than 2 months after completion of such an inspection, report in writing to the Attorney-General on the results of the inspection.
- (2) If, in the course of conducting an investigation, the review agency forms the opinion that there has been non-compliance with some other section of this Act or with the Commonwealth Act, the review agency must include details of the non-compliance in the report on the results of the inspection.
- (3) The review agency must, before including details of non-compliance in a report, give the chief officer of the eligible authority an opportunity to make comments in writing and must submit any comments received with the report.
- (4) For the purposes of an inspection, the review agency for an eligible authority, or a person authorised by the review agency for the purpose—
  - (a) may, after notifying the chief officer of the eligible authority, enter at any reasonable time premises occupied by an eligible authority; and

- (b) is entitled to have full and free access at all reasonable times to all records of the eligible authority; and
  - (c) is, despite any other law, entitled to make copies of, and to take extracts from, records of an eligible authority; and
  - (d) may require an officer of an eligible authority to give the review agency or authorised person such information as the review agency 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.
- (5) If the review agency has reason to believe that an officer of an eligible authority is able to give information relevant to an inspection, the review agency may, by written notice to the officer—
  - (a) require the officer to give the information, in writing, signed by the officer, at a specified place and within a specified period; and
  - (b) require the 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.
- (6) If the review agency has reason to believe that an officer of an eligible authority is able to give information relevant to an inspection but does not know the officer's identity, the review agency may, by written notice to the chief officer of the eligible authority, 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.
- (7) 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 by or under this section, on the grounds that it would contravene a law, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty.
- (8) The following are not admissible in evidence against a person except in proceedings for an offence against this section:
  - (a) information or an answer given by the person under this section;
  - (b) the fact that the person has given access to a document under this section;
  - (c) any information or thing (including a document) obtained directly or indirectly in consequence of the person having given information or an answer, or access to a document, under this section.
- (9) The chief officer of an eligible authority must ensure that officers of the authority provide the review agency for the authority with such assistance in relation to an inspection as the review agency reasonably requires.
- (10) A person who is required under this section—
  - (a) to attend before a person; or
  - (b) to give information; or
  - (c) to answer a question,

and who, without reasonable excuse, refuses or fails to comply with the requirement is guilty of an offence.

Penalty: \$5 000 or imprisonment for 1 year.

(11) A person—

- (a) who, without reasonable excuse, hinders a person exercising powers under this section; or
- (b) who gives to a person exercising powers under this section information knowing it to be false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for 1 year.

(12) The review agency may give information obtained under this section to the Commonwealth Ombudsman if the review agency is satisfied that the giving of the information is relevant to the performance of the Commonwealth Ombudsman's functions under the Commonwealth Act.

(13) Except as is required for the administration of this Act or authorised by this Act, the review agency and persons authorised by the review agency under this Act must not, directly or indirectly, divulge or communicate information acquired under this Act.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(14) Without limiting when information or a question will be relevant to an inspection of an eligible authority's records for the purposes of this section, the information or question will be relevant if it is about—

- (a) the location of a record; or
- (b) the making, compilation or keeping of a record; or
- (c) the accuracy or completeness of a record; or
- (d) a matter to which a record relates; or
- (e) if the review agency for the authority suspects on reasonable grounds that an officer of the authority has contravened this Act or the Commonwealth Act— a matter relating to the suspected contravention.

## **6—Obligations of Attorney-General**

The Attorney-General must, as soon as practicable after receiving a report under this Act, give a copy of the report to the Minister responsible for the administration of the Commonwealth Act.

## **7—Regulations**

The Governor may make such regulations as are contemplated by this Act or necessary or expedient for the purposes of this Act.

## **Schedule 1—Repeal of *Telecommunications (Interception) Act 1988***

The *Telecommunications (Interception) Act 1988* is repealed.