

Queensland



**TELECOMMUNICATIONS
(INTERCEPTION)
QUEENSLAND BILL 2003**

Queensland



TELECOMMUNICATIONS (INTERCEPTION) QUEENSLAND BILL 2003

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2003

A BILL

FOR

**An Act to enable particular eligible authorities under the
Telecommunications (Interception) Act 1979 (Cwlth) to be declared
agencies under that Act, and for other purposes**

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The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

1 Short title

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This Act may be cited as the *Telecommunications (Interception) Queensland Act 2003*.

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2 Commencement

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

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3 Objective

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The main objective of this Act is to establish a recording, reporting and inspection regime to complement the *Telecommunications (Interception) Act 1979* of the Commonwealth, so that the Queensland Police Service and the Crime and Misconduct Commission may use telecommunications interception as a tool for the investigation of particular serious offences prescribed under the Commonwealth Act.

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4 Dictionary

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

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(2) Unless the contrary intention appears, expressions used in this Act that are not defined in the dictionary have the same respective meanings as in the Commonwealth Act.

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5 Notes

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A note in the text of this Act is part of the Act.

22

PART 2—FUNCTIONS OF ELIGIBLE AUTHORITY	1
6 Eligible authority to keep documents connected with issue of warrants	2 3
The chief officer of an eligible authority must cause to be kept in the authority's records—	4 5
(a) each warrant issued to the authority; and	6
(b) a copy of each notification under the Commonwealth Act, section 53(1)(b) ¹ of the issue of a warrant; and	7 8
(c) each instrument revoking a warrant; and	9
(d) a copy of each certificate issued under the Commonwealth Act, section 61(4) ² by a certifying officer of the authority; and	10 11
(e) each authorisation by the chief officer under the Commonwealth Act, section 66(2). ³	12 13
7 Other records to be kept by an eligible authority in connection with interceptions	14 15
(1) The chief officer of an eligible authority must cause to be recorded in writing—	16 17
(a) particulars of each telephone application for a part 6 warrant made by the authority; and	18 19
(b) for each application by the authority for a part 6 warrant—a statement as to whether—	20 21
(i) the application was withdrawn or refused; or	22
(ii) a warrant was issued on the application; and	23
(c) for each part 6 warrant whose authority is exercised by the authority, particulars of—	24 25

1 Commonwealth Act, section 53 (Notification to Australian Federal Police of issue of warrants to other agencies)

2 Commonwealth Act, section 61 (Evidentiary certificates)

3 Commonwealth Act, section 66 (Interceptor may communicate to agency to which warrant was issued)

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(i) the warrant; and	1
(ii) the day and time each interception under the warrant began; and	2 3
(iii) how long each interception lasted; and	4
(iv) the name of the person who carried out each interception; and	5 6
(v) for a named person warrant—each service to or from which communications have been intercepted under the warrant; and	7 8 9
(d) for each restricted record that has at any time been in the possession of the authority, particulars of—	10 11
(i) if the restricted record is a record obtained by an interception under a warrant issued to the authority—that warrant; and	12 13 14
(ii) each occasion when the restricted record, whether by its making or otherwise, came to be in the possession of the authority; and	15 16 17
(iii) each occasion, if any, when the restricted record, whether by its destruction or otherwise, stopped being in the possession of the authority; and	18 19 20
(iv) each agency or other body, if any, or other person, if any, from whom, the authority received the restricted record; and	21 22
(v) each agency or other body, if any, to which, or other person, if any, to whom, the authority supplied the restricted record; and	23 24 25
(e) particulars of each use made by the authority of lawfully obtained information; and	26 27
(f) particulars of each communication of lawfully obtained information by an officer of the authority to a person or body other than an officer of the authority; and	28 29 30
(g) particulars of each occasion when, to the knowledge of an officer of the authority, lawfully obtained information was given in evidence in a relevant proceeding in relation to the authority.	31 32 33
(2) The record must be made as soon as practicable after the happening of the event to which the particulars relate or the statement relates.	34 35

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- (3) If a part 6 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. 1
2
3
- (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. 4
5
6
- 8 Documents to be given by an eligible authority to the Minister** 7
- (1) The chief officer of an eligible authority must give the Minister— 8
- (a) a copy of— 9
- (i) each warrant issued to the authority; and 10
- (ii) each instrument under the Commonwealth Act, section 52 or 57⁴ revoking a warrant issued to the authority; 11
12
- as soon as practicable after the issue or revocation of the warrant; 13
14
- (b) within 3 months after a warrant issued to the authority ceases to be in force, a written report about— 15
16
- (i) the use made by the authority of information obtained by interceptions under the warrant; and 17
18
- (ii) the communication of that information to persons other than officers of the authority; and 19
20
- (c) as soon as practicable, and in any event within 3 months, after each 30 June, a written report that sets out the information that— 21
22
- (i) the Commonwealth Act, part IX, division 2⁵ requires to be set out in the Commonwealth Minister's report under that division relating to the year ending on that 30 June; and 23
24
25
- (ii) can be derived from the authority's records. 26

4 Commonwealth Act, section 52 (Judge or nominated AAT member may revoke warrant where section 51 contravened) or 57 (Revocation of warrant by chief officer of other agency)

5 Commonwealth Act, part IX (Reports about interceptions under parts V and VI), division 2 (Reports by the Minister)

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(2) A report under subsection (1)(c) must include a statement of the total expenditure, including expenditure of a capital nature, incurred by the eligible authority in connection with the execution of warrants during the year to which the report relates.	1 2 3 4
9 Documents to be given by State Minister to Commonwealth Minister	5 6
The Minister must give the Commonwealth Minister—	7
(a) a copy of a warrant issued to an eligible authority; or	8
(b) a copy of an instrument revoking a warrant issued to an eligible authority; or	9 10
(c) a report of a type mentioned in section 8(1)(b) or (c);	11
as soon as practicable after a copy of the warrant or instrument or the report is given to the Minister.	12 13
10 Keeping and destruction of restricted records	14
(1) The chief officer of an eligible authority must cause a restricted record in the possession of the authority to be kept, except 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.	15 16 17 18 19
(2) Subsection (1) whether the restricted record was made before or after the commencement of the Commonwealth Act, section 35. ⁶	20 21
(3) The chief officer of an eligible authority must cause a restricted record of a type mentioned in subsection (1) 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 authority, other than a purpose connected with an inspection of the type mentioned in section 12 ⁷ or with a report on that type of inspection.	22 23 24 25 26 27

6 Commonwealth Act, section 35 (Preconditions for declaration)

7 Section 12 (Regular inspections of an eligible authority's records)

PART 3—FUNCTIONS AND POWERS OF PRINCIPAL INSPECTOR

11 General functions and powers

The principal inspector—

- (a) may inspect an eligible authority's records to ascertain the extent of compliance by the authority's officers with part 2;⁸ and
- (b) must report to the Minister about the results of the inspections; and
- (c) may do anything necessary or convenient for the performance of the functions mentioned in paragraphs (a) and (b).

12 Regular inspections of an eligible authority's records

(1) The principal inspector must inspect an eligible authority's records at least once before 1 July 2004 to ascertain the extent to which the authority's officers have complied with part 2 since the commencement of this Act.

(2) The principal inspector must inspect an eligible authority's records at least twice during each financial year beginning on or after 1 July 2004 to ascertain the extent to which the authority's officers have complied with part 2 since the last inspection under this part of the authority's records.

(3) The principal inspector may at any time inspect the eligible authority's records to ascertain the extent to which the authority's officers have complied with part 2 during any period.

13 Reports

(1) The principal inspector, as soon as practicable, and in any event before 1 October 2004, must report to the Minister in writing, in relation to an eligible authority, about the results of the inspection under section 12(1) of the authority's records.

(2) The principal inspector, as soon as practicable, and in any event within 3 months, after the end of each financial year, must report to the

⁸ Part 2 (Functions of eligible authority)

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Minister in writing, in relation to an eligible authority, about the results of the inspections under section 12(2), during that financial year, of the authority's records.

(3) The principal inspector may, and if the Minister asks, must, report to the Minister in writing at any time about the results of an inspection under this part.

(4) If the principal inspector has given a report to the Minister under subsection (1), (2) or (3), the principal inspector—

- (a) must give the Commonwealth Minister a notice that the report has been given; and
- (b) must give the chief officer of the eligible authority a copy of the report.

14 Principal inspector may report on breaches

If, because of an inspection under this part of an eligible authority's records, the principal inspector considers that an officer of the authority has contravened the Commonwealth Act or section 8(1)(a) or (b),⁹ the principal inspector may include a report on the contravention in the report on the inspection.

15 Principal inspector's general powers for inspections

(1) For an inspection under this part of an eligible authority's records, the principal inspector—

- (a) may, after notifying the chief officer of the authority, enter premises occupied by the authority at any reasonable time; 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 principal inspector any information—

⁹ Section 8 (Documents to be given by an eligible authority to the Minister)

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- (i) that the principal inspector considers necessary, being information that is in the officer's possession, or to which the officer has access; and
- (ii) that is relevant to the inspection.

(2) The chief officer of the eligible authority must ensure that the authority's officers give the principal inspector any help in connection with the performance of the principal inspector's functions under this part that the principal inspector reasonably requires.

16 Power to obtain relevant information

(1) If the principal inspector has reason to believe that an officer of an eligible authority is able to give information relevant to an inspection under this part of the authority's records, subsections (3) and (4) have effect.

(2) If the principal inspector 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 authority's records but does not know the officer's identity, subsection (5) has effect.

(3) The principal inspector may, by notice given to the officer, require the officer to give the information to the principal inspector—

- (a) by writing signed by the officer; and
- (b) at a stated place and within a stated period.

(4) The principal inspector may, by notice given to the officer, require the officer to attend—

- (a) before a stated inspecting officer; 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.

(5) The principal inspector may, by notice given to the chief officer of the authority, require the chief officer, or a person nominated by the chief officer, to attend—

- (a) before a stated inspecting officer; and
- (b) at a stated place; and
- (c) within a stated period or at a stated time on a stated day;

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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.

17 Principal inspector 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, 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
- (b) would be contrary to the public interest; or
- (c) might tend to incriminate the person or make the person liable to 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 25.¹⁰

(3) Nothing in any other law prevents an officer of an eligible authority from—

- (a) giving information to an inspecting officer, whether orally or in writing and whether or not in answer to a question; or
- (b) giving an inspecting officer 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

¹⁰ Section 25 (Offences relating to inspections under pt 3)

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be made, for the purposes of giving the information to a person as permitted by subsection (3).	1 2
18 Dealing with information for inspection and report	3
(1) This section applies if—	4
(a) information is given to an inspecting officer, as permitted by section 17(3) or this section, for an inspection, or for a report on an inspection, under this part of an eligible authority's records; or	5 6 7
(b) an inspecting officer obtains information because of being given access to a record of the eligible authority, as permitted by section 17(3), for an inspection under this part of an authority's records.	8 9 10 11
(2) The inspecting officer may, despite any other law, give to another inspecting officer, 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.	12 13 14 15
19 Inspecting officer not to be sued	16
Subject to section 21, ¹¹ an inspecting officer, or a person acting under an inspecting officer's direction or authority, is not liable to an action, suit or proceeding for or in relation to an act done, or omitted to be done, in good faith and without negligence in the performance, or the purported performance, of a function conferred by this part.	17 18 19 20 21
20 Delegation by principal inspector	22
(1) The principal inspector may delegate to an appropriately qualified inspecting officer any of the principal inspector's powers under this Act, other than a power to report to the Minister.	23 24 25
(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.	26 27 28
(3) In this section—	29

11 Section 21 (Confidentiality provisions relating to inspecting officer)

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“appropriately qualified” includes having the qualifications, experience or standing necessary to exercise the power.	1 2
<i>Example of ‘standing’—</i>	3
The level at which an inspecting officer is employed.	4
 21 Confidentiality provisions relating to inspecting officer	 5
(1) Anything that a person has done or omitted to do in the capacity of inspecting officer under this part is not to be included in a report made under an Act by the person in his or her capacity as the public interest monitor or as the holder of an office under another Act.	6 7 8 9
(2) Subject to section 17, ¹² a person must not record or disclose information that was obtained by anyone under a warrant and that came to the person’s knowledge because the person is or was an inspecting officer.	10 11 12
Maximum penalty—100 penalty units or 2 years imprisonment.	13
(3) Subsection (2) does not—	14
(a) prevent the principal inspector from disclosing in a report under section 13 or 14 ¹³ matters that the principal inspector considers ought to be disclosed for the purpose of stating the grounds for the conclusions and recommendations in the report; or	15 16 17 18
(b) otherwise prevent a person from recording or disclosing information for the discharge of his or her functions under this Act.	19 20 21
(4) A person is not compellable in any proceeding to disclose information that was obtained by anyone under a warrant and that came to the person’s knowledge because the person is or was an inspecting officer.	22 23 24
(5) If—	25
(a) subsection (2) or (4) applies to information within a person’s knowledge; and	26 27
(b) the information also came to the person’s knowledge because the person is or was engaged in the administration of another Act;	28 29

12 Section 17 (Principal inspector to be given information and access despite other laws)

13 Section 13 (Reports) or 14 (Principal inspector may report on breaches)

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the subsection applies despite provisions of the other Act that may allow the person to record, disclose or in a proceeding be compelled to disclose, the information.	1 2 3
22 Exchange of information between principal inspector and Commonwealth ombudsman	4 5
(1) The principal inspector may give to the Commonwealth ombudsman information that—	6 7
(a) relates to a Commonwealth agency; and	8
(b) was obtained by the principal inspector under this Act.	9
(2) The principal inspector may give information to the Commonwealth ombudsman under subsection (1) only if the principal inspector 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.	10 11 12 13 14
(3) The principal inspector may receive from the Commonwealth ombudsman information relevant to the performance of the principal inspector's functions under this Act.	15 16 17

PART 4—MISCELLANEOUS

23 Copies of reports for Commonwealth Minister	19
As soon as practicable after a report is given to the Minister under section 13, ¹⁴ the Minister must give the Commonwealth Minister a copy of the report.	20 21 22
24 General confidentiality provision	23
(1) A person who is or was engaged in the administration of this Act must not disclose any information or record obtained by the person because	24 25

14 Section 13 (Reports)

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he or she is or was engaged in the administration of this Act, unless the disclosure is made—	1 2
(a) under the Commonwealth Act; or	3
(b) for a proceeding under—	4
(i) the <i>Commissions of Inquiry Act 1950</i> ; or	5
(ii) the <i>Crime and Misconduct Act 2001</i> ; or	6
(c) for the discharge of the person's functions under this Act.	7
Maximum penalty—100 penalty units or 2 years imprisonment.	8
(2) Subsection (1) does not apply to a disclosure of information or a record by a person who is or was an inspecting officer.	9 10
<i>Note—</i>	11
Disclosure by a person who is or was an inspecting officer is dealt with under section 21.	12 13
(3) Also, 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.	14 15 16 17
 25 Offences relating to inspections under pt 3	 18
(1) A person must not, without reasonable excuse, refuse or fail—	19
(a) to attend before a person; or	20
(b) to give information; or	21
(c) to answer a question;	22
when required to do so under section 16. ¹⁵	23
Maximum penalty—20 penalty units or 6 months imprisonment.	24
(2) A person must not—	25
(a) without reasonable excuse, wilfully obstruct a person in connection with the exercise of the principal inspector's functions under part 3; or	26 27 28

¹⁵ Section 16 (Power to obtain relevant information)

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(b) give an inspecting officer, in connection with an inspection under part 3, information or a statement that the person knows to be false or misleading in a material particular. ¹⁶	1 2 3
Maximum penalty—20 penalty units or 6 months imprisonment.	4
(3) A complaint for an offence against subsection (2)(b) may state that information or a statement was ‘false or misleading’, without stating which.	5 6 7
26 Proceeding for offence	8
(1) A proceeding for an offence against this Act must be taken in a summary way under the <i>Justices Act 1886</i> .	9 10
(2) A proceeding may be started within—	11
(a) 1 year after the offence is committed; or	12
(b) 1 year after the offence comes to the complainant’s knowledge, but within 2 years after the offence is committed.	13 14
27 Regulation-making power	15
The Governor in Council may make regulations under this Act.	16
28 Attachment	17
(1) An attachment containing provisions of the Commonwealth Act referred to in definitions in this Act is attached to this Act.	18 19
(2) The attachment is not part of this Act.	20
(3) The attachment must be revised so that it is an accurate copy of the provisions as amended from time to time.	21 22
(4) The revision under subsection (3) must happen in the first reprint of this Act after an amendment of a provision contained in the attachment.	23 24
(5) The accompanying notes in the attachment may also be revised.	25

16 Part 3 (Functions and powers of principal inspector)

SCHEDULE	1
DICTIONARY	2
section 4	3
“agency” means—	4
(a) the Australian Crime Commission; or	5
(b) the Australian Federal Police; or	6
(c) the Crime and Misconduct Commission; or	7
(d) the Queensland Police Service; or	8
(e) any of the following for which a declaration under the Commonwealth Act, section 34 ¹⁷ is in force—	9 10
(i) the police force of another State;	11
(ii) an authority of the State or another State.	12
“certifying officer”, for an eligible authority, means—	13
(a) for the Queensland Police Service—	14
(i) the police commissioner; or	15
(ii) a person holding rank under the <i>Police Service Administration Act 1990</i> as deputy commissioner of the police service; or	16 17 18
(b) for the Crime and Misconduct Commission—a commissioner.	19
“chief officer”, of an eligible authority, means—	20
(a) for the Queensland Police Service—the police commissioner; or	21
(b) for the Crime and Misconduct Commission—the chairperson of the commission.	22 23
“Commonwealth Act” means the <i>Telecommunications (Interception) Act 1979</i>.	24 25

17 Commonwealth Act, section 34 (Declaration of an eligible authority of a State as an agency)

SCHEDULE (continued)

“Commonwealth Minister” means the Minister administering the Commonwealth Act.	1 2
“deputy public interest monitor” means a deputy public interest monitor under—	3 4
(a) the <i>Police Powers and Responsibilities Act 2000</i> ; or	5
(b) the <i>Crime and Misconduct Act 2001</i> .	6
“eligible authority” means—	7
(a) the Crime and Misconduct Commission; or	8
(b) the Queensland Police Service.	9
“inspecting officer” means the public interest monitor or a deputy public interest monitor.	10 11
“lawfully obtained information” see the Commonwealth Act, section 6E. ¹⁸	12 13
“notice” means written notice.	14
“obstruct” includes the following—	15
(a) hinder or resist;	16
(b) attempt to obstruct.	17
“officer” , of an eligible authority, means—	18
(a) for the Crime and Misconduct Commission—a commission officer or an employee of the commission; or	19 20
(b) for the Queensland Police Service—a police officer.	21
“part 6 warrant” means a warrant issued or to be issued under the Commonwealth Act, part 6. ¹⁹	22 23
“permitted purpose” , for an eligible authority, see the Commonwealth Act, section 5. ²⁰	24 25

18 See the attachment, item 1.

19 Commonwealth Act, Part VI (Warrants authorising agencies to intercept telecommunications)

20 See the attachment, items 2 to 7.

SCHEDULE (continued)

“police commissioner” means the commissioner of the police service under the <i>Police Service Administration Act 1990</i> .	1 2
“possession” includes the following—	3
(a) custody;	4
(b) control.	5
“premises” includes the following—	6
(a) land;	7
(b) a structure, building, aircraft, vehicle, vessel or place, whether built or not;	8 9
(c) part of a structure, building, aircraft, vehicle, vessel or place, whether built or not.	10 11
“principal inspector” means the public interest monitor.	12
“public interest monitor” means the public interest monitor under—	13
(a) the <i>Police Powers and Responsibilities Act 2000</i> ; or	14
(b) the <i>Crime and Misconduct Commission Act 2001</i> .	15
“restricted record” see the Commonwealth Act, section 5. ²¹	16
“warrant” means a warrant issued under the Commonwealth Act.	17

²¹ See the attachment, item 8.

ATTACHMENT	1
EXTRACTS FROM THE COMMONWEALTH ACT	2
section 28	3
1 Commonwealth Act, section 6E—	4
‘6E Lawfully obtained information	5
‘(1) Subject to subsection (2), a reference in this Act to lawfully obtained information is a reference to information obtained (whether before or after the commencement of this section) by intercepting, otherwise than in contravention of subsection 7(1), a communication passing over a telecommunications system.	6 7 8 9 10
‘(2) A reference in this Act to lawfully obtained information that was originally obtained by an agency, or by an eligible authority of a State, is a reference to:	11 12 13
(a) information obtained, whether before or after the commencement of this section, by intercepting a communication under a warrant issued to the agency or authority; or	14 15 16
(b) information communicated to the agency or authority in accordance with section 65A.’.	17 18
<i>Notes—</i>	19
1. The reference to subsection 7(1) is a reference to the provision in the Commonwealth Act that generally prohibits interception of telecommunications.	20 21
2. Section 65A of the Commonwealth Act authorises an employee of a carrier to communicate particular information to an officer of an agency for a purpose or purposes connected with an investigation by the agency of a serious offence.	22 23 24
2 Commonwealth Act, section 5 (Interpretation), definition “permitted purpose”—	25 26
‘ <i>permitted purpose</i> , in relation to an agency, or an eligible Commonwealth authority or an eligible authority of a State, means a purpose connected with:	27 28 29
(a) in any case:	30

ATTACHMENT (continued)

- | | | |
|-------|--|--|
| (i) | an investigation by the agency or eligible authority of a prescribed offence; | 1
2 |
| (ii) | 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; | 3
4
5 |
| (iii) | a relevant proceeding in relation to the agency or eligible authority; | 6
7 |
| (iv) | the exercise by the chief officer of the agency or eligible authority of the powers conferred by section 68; or | 8
9 |
| (v) | the keeping of records by the agency under Part VIII, or by the eligible authority under provisions of a law of the State that impose on the chief officer of the authority requirements corresponding to those imposed on the Chief Executive Officer of the ACC by subsections 80(2), 81(2) and 81(3); | 10
11
12
13
14
15 |
| (aa) | in the case of the ACC: | 16 |
| (i) | an ACC operation/investigation; or | 17 |
| (ii) | a report to the board of the ACC of the outcome of such an investigation or operation; | 18
19 |
| (b) | in the case of the Australian Federal Police: | 20 |
| (i) | an investigation of, or an inquiry into, alleged misbehaviour, or alleged improper conduct, of an officer of the Commonwealth, being an investigation or inquiry under a law of the Commonwealth or by a person in the person's capacity as an officer of the Commonwealth; | 21
22
23
24
25 |
| (ii) | a report on such an investigation or inquiry; | 26 |
| (iia) | the making by a person of a decision under the <i>Australian Federal Police Act 1979</i> in relation to the engagement of an AFP employee, the retirement of an AFP employee or the termination of the employment of an AFP employee or in relation to the appointment or the termination of the appointment of a special member of the Australian Federal Police; | 27
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ATTACHMENT (continued)

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|---|----------------------------|
| (iib) a review (whether by way of appeal or otherwise) of such a decision; | 1
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| (iii) the tendering to the Governor-General of advice to terminate, because of misbehaviour or improper conduct, the appointment of an officer of the Commonwealth; or | 3
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| (iv) deliberations of the Executive Council in connection with advice to the Governor-General to terminate, because of misbehaviour or improper conduct, the appointment of an officer of the Commonwealth; | 6
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| (ba) in the case of an eligible Commonwealth authority; | 10 |
| (i) an investigation that the Commonwealth Royal Commission concerned is conducting in the course of the inquiry it is commissioned to undertake; or | 11
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| (ii) a report on such an investigation; | 14 |
| (c) in the case of the Police Force of a State: | 15 |
| (i) an investigation of, or an inquiry into, alleged misbehaviour, or alleged improper conduct, of an officer of that State, being an investigation or inquiry under a law of that State or by a person in the person's capacity as an officer of that State; | 16
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| (ii) a report on such an investigation or inquiry; | 21 |
| (iia) the making by a person of a decision in relation to the appointment, re-appointment, term of appointment, retirement or termination of appointment of an officer or member of staff of that Police Force; | 22
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| (iib) a review (whether by way of appeal or otherwise) of such a decision; | 26
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| (iii) the tendering to the Governor of that State of advice to terminate, because of misbehaviour or improper conduct, the appointment of an officer of that State; or | 28
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| (iv) deliberations of the Executive Council of that State in connection with advice to the Governor of that State to terminate, because of misbehaviour or improper conduct, the appointment of an officer of that State; or | 31
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ATTACHMENT (continued)

(d) in the case of an eligible authority of a State:	1
(i) an inspection of the authority's records that is made under a requirement of the law of that State, being a requirement of the kind referred to in paragraph 35(1)(h); or	2 3 4
(ii) a report on such an inspection; or	5
(e) in the case of the Police Integrity Commission:	6
(i) an investigation under the Police Integrity Commission Act of police misconduct of an officer of the New South Wales Police Service; or	7 8 9
(ii) a report on such an investigation; or	10
(iii) the tendering to the Governor of New South Wales of advice to terminate, because of misbehaviour or improper conduct, the appointment of the Commissioner of the New South Wales Police Service; or	11 12 13 14
(iv) deliberations of the Executive Council of New South Wales in connection with advice to the Governor of that State to terminate, because of misbehaviour or improper conduct, the appointment of the Commissioner of the New South Wales Police Service; or	15 16 17 18 19
(f) in the case of the Anti-Corruption Commission:	20
(i) an investigation under the Anti-Corruption Commission Act into alleged corrupt conduct, criminal conduct, criminal involvement or serious improper conduct by a police officer or other public officer; or	21 22 23 24
(ii) a report on such an investigation.'.	25
<i>Notes—</i>	26
1. A prescribed offence is an offence defined under the provisions of the Commonwealth Act set out in items 3 to 6.	27 28
2. A relevant proceeding is a proceeding defined under the provisions of the Commonwealth Act set out in item 7.	29 30
3. Section 68 of the Commonwealth Act authorises the chief officer of an agency to provide information to other agencies.	31 32

ATTACHMENT (continued)

4.	The reference to subsections 80(2), 81(2) and 81(3) is a reference to the provisions of the Commonwealth Act that correspond to sections 6 and 7 of the Queensland Act.	1 2 3
5.	The reference to paragraph 35(1)(h) is a reference to a provision of the Commonwealth Act that requires, for a declaration that an agency of the State is an eligible authority for the purposes of the Commonwealth Act, regular inspections under laws of the State of the type prescribed by part 3 of the Queensland Act.	4 5 6 7
3	Commonwealth Act, section 5 (Interpretation), definition “prescribed offence”—	8 9
	<i>‘prescribed offence</i> means:	10
	(a) a serious offence;	11
	(b) an offence against subsection 7(1) or section 63;	12
	(c) an offence against a provision of Part VIIB of the <i>Crimes Act 1914</i> ;	13 14
	(d) any other offence punishable by imprisonment for life or for a period, or maximum period, of at least 3 years; or	15 16
	(e) an ancillary offence relating to an offence of a kind referred to in paragraph (a), (b), (c) or (d) of this definition.’.	17 18
	<i>Notes—</i>	19
1.	The reference to subsection 7(1) is a reference to the provision of the Commonwealth Act that generally prohibits interception of telecommunications.	20 21
2.	Section 63 of the Commonwealth Act prohibits disclosure of information obtained under the Act.	22 23
4	Commonwealth Act, section 5 (Interpretation), definition “serious offence”—	24 25
	<i>‘serious offence</i> , means an offence that is or has been a class 1 offence or a class 2 offence.’.	26 27
5	Commonwealth Act, section 5 (Interpretation), definition “class 1 offence”—	28 29
	<i>‘class 1 offence</i> means:	30

ATTACHMENT (continued)

(a) a murder, or an offence of a kind equivalent to murder;	1
(b) a kidnapping, or an offence of a kind equivalent to kidnapping;	2
(c) a narcotics offence; or	3
(ca) an offence constituted by conduct involving an act or acts of terrorism; or	4 5
(d) an offence constituted by:	6
(i) aiding, abetting, counselling or procuring the commission of;	7 8
(ii) being, by act or omission, in any way, directly or indirectly, knowingly concerned in, or party to, the commission of; or	9 10
(iii) conspiring to commit;	11
an offence of a kind referred to in paragraph (a), (b) or (c);	12
and, except for the purposes of an application for a warrant by an agency other than the ACC, includes an offence in relation to which the ACC is conducting a special investigation.’	13 14 15
6 Commonwealth Act, section 5D—	16
‘5D Class 2 offences	17
<i>‘Class 2 offences</i>	18
‘(1) This section sets out the offences that are <i>class 2 offences</i> for the purposes of this Act.	19 20
<i>‘Serious offences etc.</i>	21
‘(2) An offence is a <i>class 2 offence</i> if:	22
(a) it is an offence punishable by imprisonment for life or for a period, or maximum period, of at least 7 years; and	23 24
(b) the particular conduct constituting the offence involved, involves or would involve, as the case requires:	25 26
(i) loss of a person’s life or serious risk of loss of a person’s life; or	27 28

ATTACHMENT (continued)

(ii) serious personal injury or serious risk of serious personal injury; or	1 2
(iii) serious damage to property in circumstances endangering the safety of a person; or	3 4
(iiia) serious arson; or	5
(iv) trafficking in prescribed substances; or	6
(v) serious fraud; or	7
(vi) serious loss to the revenue of the Commonwealth, a State or the Australian Capital Territory; or	8 9
(vii) bribery or corruption of, or by:	10
(A) an officer of the Commonwealth; or	11
(B) an officer of a State; or	12
(C) an officer of a Territory; or	13
(viii) the production, publication, possession, supply or sale of, or other dealing in, child pornography; or	14 15
(ix) consenting to or procuring the employment of a child, or employing a child, in connection with child pornography.	16 17
<i>‘Offences involving planning and organisation</i>	18
‘(3) An offence is also a class 2 offence if it is an offence punishable by imprisonment for life or for a period, or maximum period, of at least 7 years, where the offence:	19 20 21
(a) involves 2 or more offenders and substantial planning and organisation; and	22 23
(b) involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques; and	24 25
(c) is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and	26 27
(d) consists of, or involves, any of the following:	28
(i) theft;	29
(ii) handling of stolen goods;	30

ATTACHMENT (continued)

(iii) tax evasion;	1
(iv) currency violations;	2
(v) extortion;	3
(vi) bribery or corruption of, or by:	4
(A) an officer of the Commonwealth; or	5
(B) an officer of a State; or	6
(C) an officer of a Territory;	7
(vii) bankruptcy violations;	8
(viii) company violations;	9
(ix) harbouring criminals;	10
(x) armament dealings;	11
(xi) a sexual offence against a person who is under 16 (including an offence against Part IIIA of the <i>Crimes Act 1914</i>);	12 13
(xii) an immigration offence.	14
‘ <i>Money laundering offences etc.</i>	15
‘(4) An offence is also a class 2 offence if it is an offence against any of the following provisions:	16 17
(a) Part 10.2 of the <i>Criminal Code</i> (other than section 400.9);	18
(aa) section 135.3 of the <i>Criminal Code</i> ;	19
(b) section 73 of the <i>Confiscation of Proceeds of Crime Act 1989</i> of New South Wales;	20 21
(c) section 122 of the Confiscation Act 1997 of Victoria;	22
(d) section 64 of the <i>Crimes (Confiscation of Profits) Act 1989</i> of Queensland;	23 24
(e) section 563A of <i>The Criminal Code</i> of Western Australia;	25
(f) section 10b of the <i>Crimes (Confiscation of Profits) Act, 1986</i> of South Australia;	26 27
(g) section 67 of the <i>Crime (Confiscation of Profits) Act 1993</i> of Tasmania;	28 29

ATTACHMENT (continued)

(h) section 74 of the <i>Proceeds of Crime Act 1991</i> of the Australian Capital Territory.	1 2
‘ <i>Offence against Part VIA of the Crimes Act 1914</i> ’	3
‘(5) An offence is also a class 2 offence if it is an offence against Part 10-7 of the <i>Criminal Code</i> .	4 5
‘ <i>Offences connected with other class 2 offences</i> ’	6
‘(6) An offence is also a class 2 offence if it is an offence constituted by:	7
(a) aiding, abetting, counselling or procuring the commission of; or	8
(b) being, by act or omission, in any way, directly or indirectly, knowingly concerned in, or party to, the commission of; or	9 10
(c) conspiring to commit;	11
an offence that is a class 2 offence under any of the preceding subsections.	12
‘ <i>Officer of a State</i> ’	13
‘(7) Despite subsection 6G(3), a reference in this section to an officer of a State includes a reference to an officer of the Police Force of a State.’	14 15
7 Commonwealth Act, section 6L—	16
‘6L Relevant proceeding	17
‘(1) A reference in this 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:	18 19 20
(a) a proceeding by way of a prosecution for a prescribed offence that is an offence against a law of the Commonwealth, or of that State, as the case may be;	21 22 23
(b) a proceeding under a law of the Commonwealth, or of that State, as the case may be, for the confiscation or forfeiture of property, or for the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence;	24 25 26 27
(c) a proceeding for the taking of evidence as mentioned in paragraph 5B(c), in so far as the proceeding relates to:	28 29
(i) a prescribed offence; or	30

ATTACHMENT (continued)

- (ii) a prescribed offence that is an offence against a law of that State;
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as the case may be;
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- (d) a proceeding for the extradition of a person as mentioned in paragraph 5B(d), in so far as the proceeding relates to a prescribed offence that is an offence against a law of the Commonwealth, or of that State, as the case may be;
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- (e) a police disciplinary proceeding that is a proceeding against a member of the Australian Federal Police, or of that Police Force, as the case may be; or
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- (ea) in the case of the Australian Federal Police:
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(i) a proceeding against an AFP employee in so far as the proceeding relates to a decision by the Commissioner of Police to terminate the employment of the employee; or
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(ii) a proceeding against a special member of the Australian Federal Police in so far as the proceeding relates to a decision by the Commissioner of Police to terminate the appointment of the member; or
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- (eb) in the case of a Police Force of a State—a proceeding against an officer or member of staff of that Police Force in so far as the proceeding relates to a decision by the Commissioner of Police to terminate the appointment of the officer or member of staff; or
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- (f) any other proceeding (not being a proceeding by way of a prosecution for an offence) in so far as it relates to alleged misbehaviour, or alleged improper conduct, of an officer of the Commonwealth, or of that State, as the case may be.
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- ‘(2) A reference in this Act, in relation to an agency, or an eligible authority of a State, to a relevant proceeding is:
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(a) in the case of the ACC—a reference to:
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(i) a proceeding by way of a prosecution for a prescribed offence to which a prescribed investigation relates or related; or
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(ii) a proceeding under a law of the Commonwealth or a State for the confiscation or forfeiture of property, or for the
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ATTACHMENT (continued)

imposition of a pecuniary penalty, in connection with the	1
commission of a prescribed offence to which a prescribed	2
investigation relates or related; or	3
(b) in the case of the Crime Commission, the Independent	4
Commission Against Corruption, the Police Integrity	5
Commission or the Inspector of the Police Integrity	6
Commission—a reference to a proceeding by way of a	7
prosecution for a prescribed offence:	8
(i) that is an offence against the law of New South Wales; and	9
(ii) to which a prescribed investigation relates or related; or	10
(c) in the case of the Crime and Misconduct Commission—a	11
reference to:	12
(i) a proceeding by way of a prosecution for a prescribed	13
offence that is an offence against the law of Queensland and	14
to which a prescribed investigation relates or related; or	15
(ii) a proceeding under a law of Queensland for the confiscation	16
or forfeiture of property, or for the imposition of a pecuniary	17
penalty, in connection with the commission of a prescribed	18
offence; or	19
(d) in the case of the Anti-Corruption Commission or the Royal	20
Commission into Police Corruption—a reference to a proceeding	21
by way of a prosecution for a prescribed offence:	22
(i) that is an offence against the law of Western Australia; and	23
(ii) to which a prescribed investigation relates or related.’.	24
<i>Note—</i>	25
The references to proceedings mentioned in paragraphs 5B(c) and (d) are references to	26
extradition proceedings.	27
8 Commonwealth Act, section 5 (Interpretation), definition	28
“restricted record”—	29
<i>‘restricted record’</i> means a record other than a copy, that was obtained by	30
means of an interception, whether or not in contravention of	31

ATTACHMENT (continued)

subsection 7(1), of a communication passing over a 1
telecommunications system.’. 2

Note— 3

The reference to subsection 7(1) is a reference to the provision of the Commonwealth 4
Act that generally prohibits interception of telecommunications. 5

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