



Telecommunications Interception Legislation Amendment Act 2002

No. 67, 2002

**An Act to amend the law relating to
telecommunications interceptions, and for related
purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Miscellaneous amendments		4
	<i>Customs Act 1901</i>	4
	<i>Telecommunications (Interception) Act 1979</i>	4
Schedule 2—Amendment of the Telecommunications (Interception) Act 1979 relating to new and defunct State bodies		12
Schedule 3—Amendment of the Telecommunications (Interception) Act 1979 relating to emergency services calls		19



Telecommunications Interception Legislation Amendment Act 2002

No. 67, 2002

An Act to amend the law relating to telecommunications interceptions, and for related purposes

[Assented to 5 July 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Telecommunications Interception
Legislation Amendment Act 2002*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	5 July 2002
2. Schedule 1, items 1 to 14 and 16 to 22	The day on which this Act receives the Royal Assent	5 July 2002
3. Schedule 1, item 23	22 June 2000	22 June 2000
4. Schedule 1, items 24 to 28	The day on which this Act receives the Royal Assent	5 July 2002
5. Schedule 1, item 29	22 June 2000	22 June 2000
6. Schedule 1, items 30 to 32	The day on which this Act receives the Royal Assent	5 July 2002
7. Schedule 1, item 33	22 June 2000	22 June 2000
8. Schedule 1, items 34 to 36	The day on which this Act receives the Royal Assent	5 July 2002
9. Schedule 1, item 37	22 June 2000	22 June 2000
10. Schedule 1, item 38	The day on which this Act receives the Royal Assent	5 July 2002
11. Schedule 1, item 39	22 June 2000	22 June 2000
12. Schedule 1, items 40 to 46	The day on which this Act receives the Royal Assent	5 July 2002

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
13. Schedule 2	The day on which this Act receives the Royal Assent	5 July 2002
14. Schedule 3	The day on which this Act receives the Royal Assent	5 July 2002

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Miscellaneous amendments

Customs Act 1901

1 Subsection 219A(1) (paragraph (a) of the definition of Judge)

Omit “Judge of the Federal Court of Australia”, substitute “Judge of a court created by the Parliament”.

2 Subsection 219AA(1)

Omit “Judge of the Federal Court of Australia”, substitute “Judge of a court created by the Parliament”.

Telecommunications (Interception) Act 1979

3 Subsection 5(1) (paragraph (d) of the definition of certifying officer)

Repeal the paragraph, substitute:

(d) in the case of the Crime Commission:

- (i) a member of the Crime Commission; or
- (ii) a member of the staff of the Crime Commission who occupies an office or position at an equivalent level to that of a senior executive officer within the meaning of the *Public Sector Management Act 1988* of New South Wales and who is authorised in writing by the Commissioner of the Commission for the purposes of this paragraph; or

4 Subsection 5(1) (paragraph (e) of the definition of certifying officer)

Repeal the paragraph, substitute:

(e) in the case of the Independent Commission Against Corruption:

- (i) the Commissioner, or an Assistant Commissioner, of the Independent Commission Against Corruption; or

- (ii) an officer of the Independent Commission Against Corruption who occupies an office or position at an equivalent level to that of a senior executive officer within the meaning of the *Public Sector Management Act 1988* of New South Wales and who is authorised in writing by the Commissioner of the Commission for the purposes of this paragraph; or

5 Subsection 5(1) (subparagraph (g)(iii) of the definition of *certifying officer*)

Repeal the subparagraph, substitute:

- (iii) a member of the staff of the Police Integrity Commission who occupies an office or position at an equivalent level to that of a senior executive officer within the meaning of the *Public Sector Management Act 1988* of New South Wales and who is authorised in writing by the Commissioner of the Commission for the purposes of this paragraph; or

6 Subsection 5(1) (at the end of paragraphs (a) and (b) of the definition of *class 1 offence*)

Add “or”.

7 Subsection 5(1) (after paragraph (c) of the definition of *class 1 offence*)

Insert:

- (ca) an offence constituted by conduct involving an act or acts of terrorism; or

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

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

9 Subsection 5(1) (subparagraph (c)(ia) of the definition of *permitted purpose*)

Omit “term of appointment or retirement”, substitute “term of appointment, retirement or termination of appointment”.

10 Subsection 5(1) (at the end of the definition of *permitted purpose*)

Add:

; or (f) in the case of the Anti-Corruption Commission:

- (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
- (ii) a report on such an investigation.

11 After paragraph 5B(e)

Insert:

(ea) a proceeding in so far as it relates to:

- (i) a decision by the Commissioner of Police to terminate the employment of an AFP employee or the appointment of a special member of the Australian Federal Police; or
- (ii) a decision by the Commissioner of a Police Force of a State to terminate the appointment of an officer or member of staff of that Police Force; or

12 After subparagraph 5D(2)(b)(iii)

Insert:

(iiia) serious arson; or

13 At the end of paragraph 5D(2)(b)

Add:

- ; or (viii) the production, publication, possession, supply or sale of, or other dealing in, child pornography; or
- (ix) consenting to or procuring the employment of a child, or employing a child, in connection with child pornography.

14 Paragraph 5D(4)(c)

Repeal the paragraph, substitute:

(c) section 122 of the **Confiscation Act 1997** of Victoria;

16 Section 6H

Omit “to in paragraphs 45(c) and (d), 45A(c) and (d), 46(1)(c) and (d) or 46A(1)(c) and (d).”, substitute:

to in:

- (a) in the case of a warrant under section 48—paragraphs 45(c) and (d) or 46(1)(c) and (d), as the case requires; or
- (b) in the case of any other Part VI warrant—paragraphs 45(c) and (d), 45A(c) and (d), 46(1)(c) and (d) or 46A(1)(c) and (d), as the case requires.

17 Subparagraph 6K(c)(iii)

Repeal the subparagraph, substitute:

- (iii) the **Confiscation Act 1997** of Victoria;

18 After paragraph 6L(1)(e)

Insert:

- (ea) in the case of the Australian Federal Police:
 - (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
 - (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
- (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 that Police Force to terminate the appointment of the officer or member of staff; or

19 Part V (heading)

Repeal the heading, substitute:

Part V—Emergency requests authorising officers of a carrier to intercept telecommunications

20 Part VI (heading)

Repeal the heading, substitute:

Part VI—Warrants authorising agencies to intercept telecommunications

21 Paragraph 33(a)

After “warrants”, insert “(other than warrants issued under section 48)”.

22 Subparagraph 39(2)(d)(ii)

Repeal the subparagraph, substitute:

- (ii) a member of the staff of the Crime Commission; or

23 Section 47

Omit “Part VI warrant”, substitute “warrant issued under section 45, 45A, 46 or 46A”.

24 Subsection 48(1)

Repeal the subsection, substitute:

- (1) If an agency could apply for a warrant under section 45 or 46 (authorising interceptions of communications to or from a service), it may instead apply for a warrant under this section that also authorises entry on premises. The agency does so by including in the application that would otherwise have been made under section 45 or 46 a request that the warrant also authorise entry on specified premises.

25 Paragraph 48(3)(a)

After “applies”, insert “under this section”.

26 At the end of paragraph 48(3)(a)

Add “and”.

27 Paragraph 48(3)(b)

Omit “the application includes a request that the warrant authorise entry on specified premises and”.

28 At the end of paragraph 48(3)(b)

Add “and”.

29 Paragraph 48(3)(c)

Omit “section 45, 45A, 46 or 46A empowers”, substitute “section 45 or 46 would empower”.

30 Paragraph 48(3)(c)

Omit “a warrant on the application”, substitute “a warrant if the application had been made under either of those sections”.

31 After paragraph 48(3)(c)

Insert:

- (ca) Division 3 has been complied with in relation to the application; and

32 Subsection 48(4)

After “warrant”, insert “under this section”.

33 Subsection 48(6)

Repeal the subsection.

34 Subsection 49(7)

Omit “mentioned in paragraph 45(d), 45A(d), 46(1)(d) or 46A(1)(d), as the case may be.”, substitute:

mentioned in:

- (a) in the case of a warrant issued under section 48—paragraph 45(d) or 46(1)(d), as the case requires; or
- (b) otherwise—paragraph 45(d), 45A(d), 46(1)(d) or 46A(1)(d), as the case requires.

35 Section 54

Omit “Part VI warrant”, substitute “warrant issued under section 45, 45A, 46 or 46A”.

36 At the end of section 54

Add:

- (2) A warrant issued to the Australian Federal Police or under section 48 comes into force when it is issued.

37 Paragraph 58(1)(b)

After “warrant”, insert “(other than a warrant issued under section 48)”.

38 Paragraph 60(1)(a)

After “warrant”, insert “(other than a warrant issued under section 48)”.

39 Subsection 61(3)

Omit “Part VI warrant”, substitute “warrant issued under section 45, 45A, 46 or 46A”.

40 At the end of subparagraph 68(c)(i)

Add “or”.

41 After subparagraph 68(c)(ii)

Insert:

- (ia) an act or omission by an AFP employee or special member of the Australian Federal Police that may give rise to a decision by the Commissioner of Police to terminate the employment of the employee or the appointment of the special member; or

42 At the end of subparagraph 68(d)(i)

Add “or”.

43 After subparagraph 68(d)(ii)

Insert:

- (ia) an act or omission by an officer or member of staff of the Police Force of a State that may give rise to a decision by the Commissioner of that Police Force to terminate the appointment of the officer or member of staff; or

44 Before paragraph 68(f)

Insert:

- (ea) if the information relates, or appears to relate, to a matter that may give rise to an investigation by the Independent Commission Against Corruption—to the Commissioner of the Independent Commission Against Corruption; and

45 Paragraph 81A(2)(g)

Omit “mentioned in paragraph 45(d), 45A(1)(d), 46(1)(d) or 46A(1)(d), as the case may be.”, substitute:

mentioned in:

- (i) in the case of a warrant issued under section 48—
paragraph 45(d) or 46(1)(d), as the case requires; or
- (ii) otherwise—paragraph 45(d), 45A(d), 46(1)(d) or
46A(1)(d), as the case requires.

46 Paragraph 81C(2)(g)

Omit “mentioned in paragraph 45(d), paragraph 45A(1)(d), 46(1)(d) or 46A(1)(d), as the case may be.”, substitute:

mentioned in:

- (i) in the case of a warrant issued under section 48—
paragraph 45(d) or 46(1)(d), as the case requires; or
- (ii) otherwise—paragraph 45(d), 45A(d), 46(1)(d) or
46A(1)(d), as the case requires.

Schedule 2—Amendment of the Telecommunications (Interception) Act 1979 relating to new and defunct State bodies

1 Subsection 5(1) (paragraph (f) of the definition of *certifying officer*)

Omit “Criminal Justice Commission” (wherever occurring), substitute “Crime and Misconduct Commission”.

2 Subsection 5(1) (subparagraph (h)(ii) of the definition of *certifying officer*)

Omit “or” (last occurring).

3 Subsection 5(1) (paragraph (i) of the definition of *certifying officer*)

Repeal the paragraph.

4 Subsection 5(1) (paragraph (f) of the definition of *chief officer*)

Omit “Criminal Justice Commission”, substitute “Crime and Misconduct Commission”.

5 Subsection 5(1) (paragraph (f) of the definition of *chief officer*)

Omit “Chairman of the Commission”, substitute “Chairperson of the Commission”.

6 Subsection 5(1) (paragraph (g) of the definition of *chief officer*)

Repeal the paragraph.

7 Subsection 5(1) (paragraph (j) of the definition of *chief officer*)

Repeal the paragraph, substitute:

- (j) in the case of the Royal Commission into Police
Corruption—the person constituting that Royal Commission.

8 Subsection 5(1) (definition of *commission member*)

Repeal the definition.

**9 Subsection 5(1) (paragraph (b) of the definition of
Commissioner)**

Omit “Criminal Justice Commission”, substitute “Crime and
Misconduct Commission”.

**10 Subsection 5(1) (paragraph (b) of the definition of
Commissioner)**

Omit “Chairman”, substitute “Chairperson”.

11 Subsection 5(1)

Insert:

Crime and Misconduct Act means the *Crime and Misconduct Act
2001* of Queensland.

12 Subsection 5(1)

Insert:

Crime and Misconduct Commission means the Crime and
Misconduct Commission of Queensland.

13 Subsection 5(1) (definition of *Criminal Justice Act*)

Repeal the definition.

**14 Subsection 5(1) (definition of *Criminal Justice
Commission*)**

Repeal the definition.

**15 Subsection 5(1) (paragraph (b) of the definition of *eligible
authority*)**

Omit “the Royal Commission into the New South Wales Police
Service,”.

16 Subsection 5(1) (paragraph (c) of the definition of *eligible authority*)

Omit “Criminal Justice Commission or the QCC”, substitute “Crime and Misconduct Commission”.

17 Subsection 5(1) (at the end of paragraph (d) of the definition of *eligible authority*)

Add “or the Royal Commission into Police Corruption”.

18 Subsection 5(1) (definition of *member of the staff of the QCC*)

Repeal the definition.

19 Subsection 5(1) (paragraph (f) of the definition of *officer*)

Repeal the paragraph, substitute:

- (f) in the case of the Crime and Misconduct Commission—a commission officer (within the meaning of the Crime and Misconduct Act); or

20 Subsection 5(1) (paragraph (g) of the definition of *officer*)

Repeal the paragraph.

21 Subsection 5(1) (paragraph (j) of the definition of *officer*)

Repeal the paragraph, substitute:

- (j) in the case of the Royal Commission into Police Corruption:
 - (i) the person constituting that Royal Commission; or
 - (ii) a member of the staff of that Royal Commission.

22 Subsection 5(1) (paragraph (d) of the definition of *prescribed investigation*)

Omit “Criminal Justice Commission”, substitute “Crime and Misconduct Commission”.

23 Subsection 5(1) (paragraph (d) of the definition of *prescribed investigation*)

Omit “Criminal Justice Act”, substitute “Crime and Misconduct Act”.

**24 Subsection 5(1) (paragraph (e) of the definition of
prescribed investigation)**

Repeal the paragraph.

**25 Subsection 5(1) (paragraph (h) of the definition of
prescribed investigation)**

Repeal the paragraph, substitute:

- (h) in the case of the Royal Commission into Police
Corruption—an investigation that the Royal Commission is
conducting in the course of the inquiry it is commissioned to
undertake.

26 Subsection 5(1) (definition of *QCC*)

Repeal the definition.

27 Subsection 5(1) (definition of *Queensland Act*)

Repeal the definition.

**28 Subsection 5(1) (definition of *Queensland crime
commissioner*)**

Repeal the definition.

**29 Subsection 5(1) (paragraph (f) of the definition of *relevant
offence*)**

Omit “Criminal Justice Commission”, substitute “Crime and
Misconduct Commission”.

**30 Subsection 5(1) (paragraph (g) of the definition of *relevant
offence*)**

Repeal the paragraph.

**31 Subsection 5(1) (paragraph (j) of the definition of *relevant
offence*)**

Repeal the paragraph, substitute:

- (j) in the case of the Royal Commission into Police
Corruption—a prescribed offence that is an offence against
the law of Western Australia and to which a prescribed
investigation relates.

32 Subsection 5(1)

Insert:

Royal Commission into Police Corruption means the Royal Commission established by the Governor of Western Australia by Commission dated 12 December 2001 to inquire into, and report on whether, since 1 January 1985, there has been corrupt conduct or criminal conduct by any Western Australian police officer.

33 Subsection 5(1) (definition of *Royal Commission into the New South Wales Police Service*)

Repeal the definition.

34 Paragraph 5B(i)

Repeal the paragraph, substitute:

- (i) a proceeding of the Royal Commission into Police Corruption; or

35 Subparagraph 6A(1)(c)(iii)

Omit “Criminal Justice Commission”, substitute “Crime and Misconduct Commission”.

36 Subparagraph 6A(1)(c)(iv)

Repeal the subparagraph.

37 Subparagraph 6A(1)(c)(ix)

Repeal the subparagraph, substitute:

- (ix) the Royal Commission into Police Corruption.

38 Paragraph 6L(2)(b)

Omit “the Royal Commission into the New South Wales Police Service,”.

39 Paragraph 6L(2)(c)

Omit “Criminal Justice Commission or the QCC”, substitute “Crime and Misconduct Commission”.

40 Paragraph 6L(2)(d)

After “Anti-Corruption Commission”, insert “or the Royal Commission into Police Corruption”.

41 Paragraph 39(2)(f)

Repeal the paragraph, substitute:

- (f) in the case of the Crime and Misconduct Commission—a commission officer (within the meaning of the Crime and Misconduct Act); or

42 Subparagraph 39(2)(h)(ii)

Omit “or”.

43 Paragraph 39(2)(i)

Repeal the paragraph.

44 Paragraph 68(e)

Repeal the paragraph.

45 Paragraph 68(h)

Repeal the paragraph, substitute:

- (h) if the information relates, or appears to relate, to a matter that may give rise to an investigation by the Crime and Misconduct Commission—to the Commissioner of the Crime and Misconduct Commission; and
- (i) if the information relates, or appears to relate, to a matter that may give rise to an investigation by the Royal Commission into Police Corruption—to the person constituting that Royal Commission.

46 Transitional

- (1) Any action taken or any other thing done by, or in relation to, the Criminal Justice Commission of Queensland or the Queensland Crime Commission established by the *Crime Commission Act 1997* of Queensland before the commencement of this Schedule under or for the purposes of the *Telecommunications (Interception) Act 1979* is to be treated for the purposes of that Act after that commencement as if it had been taken or done by or in relation to the Crime and Misconduct Commission of Queensland.

- (2) The Governor-General may make regulations in relation to transitional matters that:
- (a) relate to the operation of the *Telecommunications (Interception) Act 1979* and arise out of the merging of the Criminal Justice Commission of Queensland and the Queensland Crime Commission established by the *Crime Commission Act 1997* of Queensland to form the Crime and Misconduct Commission of Queensland; or
 - (b) otherwise arise out of the enactment of this Schedule.
- (3) Regulations made for the purposes of paragraph (2)(a) have effect despite subitem (1).

Schedule 3—Amendment of the Telecommunications (Interception) Act 1979 relating to emergency services calls

1 After subsection 6(2)

Insert:

Communications to emergency services numbers

- (2A) In this section, an *emergency services number* is a telephone number:
- (a) on which assistance in emergencies may be sought from:
 - (i) a police force or service; or
 - (ii) a fire service; or
 - (iii) an ambulance service; and
 - (b) that is specified in regulations made for the purposes of this paragraph, or is in a class of numbers specified in regulations made for the purposes of this paragraph.
- (2B) If a person who is lawfully engaged in duties relating to the receiving and handling of communications to an emergency services number listens to or records a communication passing over a telecommunications system to the emergency services number, the listening or recording does not, for the purposes of this Act, constitute the interception of the communication.

[Minister's second reading speech made in—
House of Representatives on 12 March 2002
Senate on 14 March 2002]

(40/02)

