

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

LAW AND JUSTICE LEGISLATION AMENDMENT BILL 1989

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AMENDMENTS OF THE COMPLAINTS (AUSTRALIAN FEDERAL POLICE) ACT 1981
RELATING TO CAUTIONS AND ADMONITIONS

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CONSEQUENTIAL AMENDMENTS OF THE TELECOMMUNICATIONS
(INTERCEPTION) ACT 1979



1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 25 May 1989

(Attorney-General)

A BILL

FOR

**An Act to amend various Acts relating to law and justice,
and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Law and Justice Legislation Amendment Act 1989*.

Commencement

2. (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.

10 **(2)** Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(3) Subject to subsection (4), sections 3, 4 and 5 and Schedule 1 commence on a day or days to be fixed by Proclamation.

(4) If section 3, 4 or 5 or Schedule 1 does not commence under subsection (3) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

(5) Sections 7 and 8, paragraph 40 (1) (b) and subsection 40 (2) commence: 5

(a) immediately after the commencement of section 5 of the *Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989*; or

(b) on the day on which this Act receives the Royal Assent; 10
whichever occurs last.

PART 2—AMENDMENTS OF THE COMPLAINTS (AUSTRALIAN FEDERAL POLICE) ACT 1981

Principal Act

3. In this Part, “Principal Act” means the *Complaints (Australian Federal Police) Act 1981*¹. 15

Charges in respect of breaches of discipline

4. Section 67 of the Principal Act is amended:

(a) by omitting subsection (4);

(b) by omitting from subsection (7) all the words from and including “by way of” (first occurring) to and including “Police or”. 20

Amendments relating to cautions and admonitions

5. The Principal Act is further amended as set out in Schedule 1.

PART 3—AMENDMENTS OF THE CRIMES ACT 1914

Principal Act

6. In this Part, “Principal Act” means the *Crimes Act 1914*². 25

Equipment used for unlawful purposes etc.

7. Section 85ZK of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) Subsection (1) does not apply in relation to equipment if the connection by a person of the equipment to a telecommunications network would not be in contravention of section 114 of the *Telecommunications Act 1989*.”. 30

8. After section 85ZK of the Principal Act the following sections are inserted in Part VIIB:

Unauthorised call-switching devices prohibited

“85ZKA. (1) A person shall not:

- (a) manufacture;
- (b) advertise, display or offer for sale;
- (c) sell; or
- (d) use, operate or possess;

equipment that the person knows is equipment of a kind that, when connected to a telecommunications network operated by Telecom, enables 2 persons each of whom, by means of different telecommunications services supplied by Telecom, calls that equipment (whether or not either of the persons is aware that the call the person is making is a call to such equipment), to send communications to, and receive communications from, each other, over that network during those calls.

Penalty: Imprisonment for 5 years.

“(2) Subsection (1) does not apply to equipment:

- (a) if the connection of the equipment to a telecommunications network by a person would not be in contravention of section 114 of the *Telecommunications Act 1989*; or
- (b) if the equipment is used, or intended for use, by a carrier in connection with a telecommunications service or the operation or maintenance of a telecommunications network.

“(3) For the purposes of establishing a contravention of subsection (1), if, having regard to:

- (a) a person’s abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention of that subsection;

the person ought reasonably to have known that equipment is equipment of the kind referred to in that subsection, the person shall be taken to have known that the equipment is equipment of that kind.

Interception devices prohibited

“85ZKB. (1) A person shall not:

- (a) manufacture;
- (b) advertise, display or offer for sale;
- (c) sell; or
- (d) possess;

an apparatus or device (whether in an assembled or unassembled form) that the person knows is an apparatus or device of a kind that is capable of being used to enable a person to intercept a communication in contravention of subsection 7 (1) of the *Telecommunications (Interception) Act 1979*.

Penalty: Imprisonment for 5 years.

“(2) Subsection (1) does not apply:

(a) to an apparatus or device unless the apparatus or device could reasonably be regarded as having been designed for the purpose, or for purposes including the purpose, of using it in connection with an act that, if not done in any of the circumstances referred to in subsection 7 (2) of the *Telecommunications (Interception) Act 1979*, would contravene subsection 7 (1) of that Act; 5

(b) to the possession of an apparatus or device by a person in the course of the person’s duties relating to interception of communications passing over a telecommunications system (being a telecommunications system within the meaning of the *Telecommunications (Interception) Act 1979*), that is interception of communications otherwise than in contravention of subsection 7 (1) of that Act; or 10

(c) to the: 15

- (i) manufacture;
- (ii) advertising, displaying or offering for sale;
- (iii) sale; or
- (iv) possession;

of an apparatus or device of the kind referred to in subsection (1) of this section in circumstances specified in regulations made for the purposes of this subsection. 20

“(3) For the purposes of establishing a contravention of subsection (1), if, having regard to:

(a) a person’s abilities, experience, qualifications and other attributes; and 25

(b) all the circumstances surrounding the alleged contravention of that subsection;

the person ought reasonably to have known that an apparatus or device is an apparatus or device of a kind referred to in that subsection, the person shall be taken to have known that the apparatus or device is an apparatus or device of that kind.”. 30

PART 4—AMENDMENTS OF THE CRIMES (AIRCRAFT) ACT 1963

Principal Act

9. In this Part, “Principal Act” means the *Crimes (Aircraft) Act 1963*. 35

Prosecutions

10. Section 21 of the Principal Act is amended by adding at the end the following subsection:

“(4) A reference in this section to an offence against this Act includes a reference to an offence against: 40

- (a) section 6, 7 or 7A of the *Crimes Act 1914*; or

(b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;

that relates to an offence against this Act.”.

Jurisdiction of courts

5 **11.** Section 22 of the Principal Act is amended by omitting from subsection (2) all the words after “paragraphs” and substituting “39 (2) (a) and (c) of the *Judiciary Act 1903*.”.

Offences against Parts III and IIIA

12. Section 22A of the Principal Act is amended:

10 (a) by omitting from subsections (1) and (2) “section 18” and substituting “Part III or IIIA”;

(b) by adding at the end the following subsection:

15 “(5) A reference in this section to an offence against Part III or IIIA, or an offence against section 18, includes a reference to an offence against:

(a) section 6 or 7 of the *Crimes Act 1914*; or

(b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;

20 that relates to an offence against Part III or IIIA, or an offence against section 18, as the case may be.”.

PART 5—AMENDMENTS OF THE CRIMES (FOREIGN INCURSIONS AND RECRUITMENT) ACT 1978

Principal Act

25 **13.** In this Part, “Principal Act” means the *Crimes (Foreign IncurSIONS and Recruitment) Act 1978*⁴.

14. After section 9 of the Principal Act the following section is inserted:

Mode of trial

“9A. (1) Subject to subsection (2), a prosecution for an offence against this Act shall be on indictment.

30 “(2) Where the law of a State or Territory makes provision for a person who pleads guilty to a charge in proceedings for the person’s commitment for trial on indictment to be committed to a higher court and dealt with otherwise than on indictment, a person charged in that State or Territory with an offence against this Act may be dealt with in accordance with that law.

35

“(3) A reference in this section to an offence against this Act includes a reference to an offence against:

(a) section 6 or 7 of the *Crimes Act 1914*; or

(b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;
that relates to an offence against this Act.”.

Consent of Attorney-General required for prosecutions

15. Section 10 of the Principal Act is amended: 5

(a) by inserting in subsection (1) “, or for the summary trial of a person for an offence against this Act,” after “against this Act”;

(b) by adding at the end the following subsection:

“(4) A reference in this section to an offence against this Act includes a reference to an offence against: 10

(a) section 6, 7 or 7A of the *Crimes Act 1914*; or

(b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;

that relates to an offence against this Act.”.

Certificates of Ministers 15

16. Section 11 of the Principal Act is amended by inserting in subsection (4) “an offence against” after “that relates to”.

PART 6—AMENDMENT OF THE CRIMES (INTERNATIONALLY PROTECTED PERSONS) ACT 1976

Principal Act 20

17. In this Part, “Principal Act” means the *Crimes (Internationally Protected Persons) Act 1976*⁵.

Offences

18. Section 8 of the Principal Act is amended by inserting in subsection (6) “or for an offence against section 7 of the *Crimes Act 1914* that is related to such an offence,” after “against subsection (1),”. 25

PART 7—AMENDMENT OF THE CRIMES (PROTECTION OF AIRCRAFT) ACT 1973

Principal Act

19. In this Part, “Principal Act” means the *Crimes (Protection of Aircraft) Act 1973*⁶. 30

20. After section 16 of the Principal Act the following section is inserted:

Mode of trial

“16A. (1) Subject to subsection (2), a prosecution for an offence against this Act shall be on indictment. 35

“(2) Where the law of a State or Territory makes provision for a person who pleads guilty to a charge in proceedings for the person’s commitment

for trial on indictment to be committed to a higher court and dealt with otherwise than on indictment, a person charged in that State or Territory with an offence against this Act may be dealt with in accordance with that law.”.

5 **PART 8—AMENDMENT OF THE CUSTOMS ACT 1901**

Principal Act

21. In this Part, “Principal Act” means the *Customs Act 1901*⁷.

Interpretation

10 22. Section 219A of the Principal Act is amended by inserting in subsection (1) the following definition:

“ ‘premises’ includes:

- (a) any structure, building, aircraft or ship, or a vehicle or other carriage;
- (b) any land (whether enclosed or built on or not); and
- 15 (c) any part of premises (including premises of a kind referred to in paragraph (a) or (b));”.

PART 9—AMENDMENTS OF THE EVIDENCE ACT 1905

Principal Act

23. In this Part, “Principal Act” means the *Evidence Act 1905*⁸.

20 24. After section 7W of the Principal Act the following sections are inserted:

Other proceedings

25 “7WA. (1) Where, under subsection 7W (1), a superior court makes an order in relation to a committal proceeding, it may include in the order an order that evidence taken outside Australia under the first-mentioned order may, subject to this section, be tendered in a proceeding (in this section called a ‘subsequent proceeding’) that is:

- (a) a criminal proceeding that results from the committal proceeding;
- or
- 30 (b) a related civil proceeding.

 “(2) Where, under subsection 7V (1) or 7W (1), a superior court makes an order in relation to a criminal proceeding (other than a committal proceeding), it may include in the order an order that evidence taken outside Australia under the first-mentioned order may, subject to this section, be tendered in a proceeding (in this section called a ‘subsequent proceeding’) that is a related civil proceeding.

35 “(3) Subject to subsection (4), where a superior court that made an order under subsection 7V (1) or 7W (1) in relation to a committal

proceeding, or a criminal proceeding other than a committal proceeding, included in the order an order under this section, the court before which a subsequent proceeding takes place may, on such terms (if any) as it thinks fit, permit a party to the subsequent proceeding to tender as evidence in the subsequent proceeding the evidence of a person taken in an examination held as a result of the order made under subsection 7V (1) or 7W (1) or a record of that evidence. 5

“(4) Evidence of a person so tendered is not admissible if:

- (a) it appears to the court’s satisfaction at the hearing of the subsequent proceeding that the person is in Australia and is able to attend the hearing; or 10
- (b) the evidence would not have been admissible had it been given or produced at the hearing of the subsequent proceeding.

“(5) Where it is in the interests of justice to do so, the court before which the subsequent proceeding takes place may, in its discretion, exclude from the subsequent proceeding evidence taken in an examination held as a result of an order made under subsection 7V (1) or 7W (1), even if it is otherwise admissible. 15

“(6) The powers vested in a court under subsection (1) or (2) may be exercised in chambers. 20

“(7) In this section, unless the contrary intention appears:

‘related civil proceedings’, in relation to criminal proceedings, means any civil proceedings arising from the same subject matter from which the criminal proceedings arose, and, in particular, includes:

- (a) proceedings under the *Proceeds of Crime Act 1987*; 25
- (b) proceedings under the *Customs Act 1901*; and
- (c) proceedings for the recovery of tax, or of any duty, levy or charge, payable to the Commonwealth.

Variation or revocation of orders

“7WB. (1) A superior court may vary or revoke an order made by the court under section 7V or 7W. 30

“(2) The power to vary an order made under section 7V or 7W includes the power to:

- (a) include in the order an order under section 7WA; or
- (b) vary or revoke an order under section 7WA that is included in the first-mentioned order. 35

“(3) Where an order under section 7V or 7W that includes an order under section 7WA is revoked, the order under section 7WA shall be taken to have been revoked at the same time.”.

25. After Part IIIB of the Principal Act the following Part is inserted:

“PART IIIC—TAKING OF EVIDENCE FOR PROCEEDINGS IN FOREIGN COURTS

Interpretation

- 5 “7ZA. In this Part:
- ‘Australia’ includes the external Territories;
- ‘authority’ means any person or body authorised to take or receive evidence:
- 10 (a) whether on behalf of a court or otherwise; or
- (b) whether or not the person or body is empowered to require the answering of questions or the production of documents;
- ‘Federal Court’ means the Federal Court of Australia;
- ‘foreign court’ means any court, or authority, of a foreign country or a part of such a country.

15 **Application of Part**

“7ZB. (1) This Part applies in relation to any proceedings before an Australian court or authority that are proceedings:

- (a) for the taking of evidence for use in proceedings instituted in or before a foreign court; and
- 20 (b) relating to a civil or commercial matter.

“(2) The power of the Attorney-General to make an order under section 7ZD may only be exercised in relation to proceedings referred to in subsection (1).

Exercise of powers under this Part

25 “7ZC. The Attorney-General shall not exercise a power under this Part unless he or she is satisfied that it is desirable that the power be exercised for the purpose of preventing prejudice to Australia’s security.

Orders

30 “7ZD. (1) The Attorney-General may make a written order prohibiting one or more of the following acts:

- (a) the production of a document;
- (b) the production of a thing;
- (c) the giving of evidence or information, whether in relation to the contents of a document or otherwise.

35 “(2) An order under this section may:

- (a) be directed to a particular person, to a class of persons or to persons generally;
- (b) relate to particular proceedings, to a class of proceedings or to proceedings generally; and
- 40 (c) relate to a particular document, thing, evidence or information or to a class of documents, things, evidence or information.

Copies etc. of documents

“7ZE. (1) Where the Attorney-General makes an order under section 7ZD that has effect in relation to a document, the order also has effect in relation to any copy, extract or summary of that document that is in Australia as if the copy, extract or summary were the document. 5

“(2) Subsection (1) applies to a copy, extract or summary that is in existence at any time while the order concerned remains in force.

Intervention

“7ZF. (1) The Attorney-General may, on behalf of the Commonwealth, intervene in proceedings to which this Part applies for the purpose of preventing a contravention of an order made under section 7ZD. 10

“(2) Where the Attorney-General intervenes in proceedings before a court under this section:

- (a) a certificate by the Attorney-General stating that the doing of an act prohibited by an order made under section 7ZD would be prejudicial to Australia’s security is conclusive evidence of that fact; and 15
- (b) the court may, in the proceedings, make such order as to costs against the Commonwealth as the court thinks fit.

Injunctions

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“7ZG. Where:

- (a) there is in force an order made under section 7ZD that prohibits the production of a document or thing or the giving of evidence or information; and
- (b) the Federal Court is satisfied, on application by the Attorney-General, that there are reasonable grounds for believing that the person having possession or control of the document, thing, evidence or information might contravene the order; 25

the Federal Court may grant an injunction restraining that person from dealing with the document, thing, evidence or information in a manner specified in the injunction or restraining that person from dealing with the document, thing, evidence or information except in a manner specified in the injunction.”. 30

PART 10—AMENDMENTS OF THE FEDERAL COURT OF AUSTRALIA ACT 1976

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Principal Act

26. In this Part, “Principal Act” means the *Federal Court of Australia Act 1976*°.

27. After section 30 of the Principal Act the following section is inserted in Division 2 of Part III:

Reference appeals

“30A. (1) Where:

- 5 (a) a person has been tried on an indictment in the Supreme Court of the Australian Capital Territory; and
 (b) the person has been acquitted in respect of the whole or any part of the indictment;

10 the Attorney-General or the Director of Public Prosecutions may, within 6 weeks after the conclusion of the trial, or within such longer period as the Court, on sufficient cause being shown, allows, submit for the determination of a Full Court any question of law arising at or in connection with the trial.

“(2) The Full Court shall hear and determine the question.

15 “(3) A determination made by the Court under this section does not invalidate or affect any verdict or decision given at the trial.

“(4) Any person who was charged at the trial in, or affected by the decision of, the Supreme Court of the Australian Capital Territory is entitled to be heard in the proceedings to determine the question.

20 “(5) If it appears that a person who was charged at the trial in, or affected by the decision of, the Supreme Court of the Australian Capital Territory does not propose to be represented in the proceedings to determine the question, the Attorney-General or Director of Public Prosecutions, as the case requires, shall instruct counsel to argue the question on the person’s
 25 behalf.

“(6) A person shall not publish:

- (a) a report of a submission made under subsection (1); or
 (b) a report of proceedings under this section that discloses the name or identity of any person who was charged at the trial in, or affected
 30 by the decision of, the Supreme Court of the Australian Capital Territory.

“(7) A contravention of subsection (6) is punishable as a contempt of the Court.”.

Rules of Court

35 28. Section 59 of the Principal Act is amended by inserting after paragraph (2) (c) the following paragraph:

“(ca) the manner in which a submission may be made under subsection 30A (1), and the content of such a submission;”.

PART 11—AMENDMENTS OF THE PRIVACY ACT 1988

40 **Principal Act**

29. In this Part, “Principal Act” means the *Privacy Act 1988*¹⁰.

Interpretation

30. Section 6 of the Principal Act is amended by inserting in subsection (1) the following definition:

“‘staff of the Ombudsman’ means the persons appointed or employed for the purposes of section 31 of the *Ombudsman Act 1976*;” 5

Complaints

31. Section 36 of the Principal Act is amended by inserting in subsection (4) “and members of the staff of the Ombudsman” after “Commission”.

Delegation

32. Section 99 of the Principal Act is amended: 10

- (a) by inserting “either” after “delegate to”;
- (b) by inserting “or a member of the staff of the Ombudsman” after “Commission”.

PART 12—AMENDMENTS OF THE STATE AND TERRITORIAL LAWS AND RECORDS RECOGNITION ACT 1901 15

Principal Act

33. In this Part, “Principal Act” means the *State and Territorial Laws and Records Recognition Act 1901*¹¹.

Interpretation

34. Section 2 of the Principal Act is amended by adding at the end the following definition: 20

“‘Minister of the Crown’ means:

- (a) in the case of the Australian Capital Territory—the holder of an office within the meaning of subsection 39 (1) of the *Australian Capital Territory (Self-Government) Act 1988*; 25
- (b) in the case of the Northern Territory—the holder of an office within the meaning of section 34 of the *Northern Territory (Self-Government) Act 1978*; or
- (c) in the case of Norfolk Island—the holder of an office within the meaning of section 12 of the *Norfolk Island Act 1979*.” 30

Proof of proclamations, commissions, orders and regulations

35. Section 6 of the Principal Act is amended:

- (a) by omitting from subsection (1) “or order issued by the Governor-General, or by a Minister or authority” and substituting “, order or regulation issued by the Governor-General, by a Minister, the Administrator or Executive of a Territory, by or under the authority of a Minister of the Crown for a Territory or by an authority”; 35
- (b) by inserting after paragraph (1) (d) the following paragraphs:
 - “(da) by the production (in the case of any proclamation, commission, order or regulation issued by the Executive of 40

a Territory) of a copy or extract purporting to be certified to be true by the Secretary (however described) of the Executive; or

5 (db) by the production (in the case of any proclamation, commission, order or regulation issued by the Administrator of a Territory) of a copy or extract purporting to be certified to be true by the Secretary to the Executive Council of the Territory; or

10 (dc) by the production (in the case of any proclamation, commission, order or regulation issued by or under the authority of any Minister of the Crown for a Territory) of a copy or extract purporting to be certified to be true by any Minister of the Crown for the Territory; or”.

Proof of Votes and Proceedings of State Parliaments etc.

15 36. Section 11 of the Principal Act is amended:

- (a) by inserting in subsection (1) “or the Legislative Assembly of any Territory” after “any State”;
- (b) by inserting in subsection (1) “or Territory” after “that State”;
- (c) by adding at the end of subsection (2) “or the Legislative Assembly of a Territory”.

20 37. After section 11 of the Principal Act the following section is inserted:

Proof of Minutes of Proceedings of Territorial Assemblies

25 “11A. A copy of the Minutes of Proceedings of the Legislative Assembly for the Australian Capital Territory, the Northern Territory or Norfolk Island is admissible in evidence if it is certified by:

- (a) the Presiding Officer of the Legislative Assembly in the case of the Australian Capital Territory;
- (b) the Clerk of the Legislative Assembly in the case of the Northern Territory;
- 30 (c) the President or Deputy President of the Legislative Assembly in the case of Norfolk Island; or
- (d) the officer of the Legislative Assembly responsible for keeping the Minutes;

to be a true copy of those Minutes.”.

35 **Proof of act done by Governor-General etc.**

38. Section 14A of the Principal Act is amended by omitting “or an authority of the Territory is empowered” and substituting “the Administrator of the Territory, a Minister of the Crown for the Territory or an authority of the Territory is empowered or authorised”.

**PART 13—AMENDMENTS OF THE TELECOMMUNICATIONS
(INTERCEPTION) ACT 1979**

Principal Act

39. In this Part, “Principal Act” means the *Telecommunications (Interception) Act 1979*¹².

5

Interpretation

40. (1) Section 5 of the Principal Act is amended:

(a) by adding at the end of paragraph (b) of the definition of “eligible authority” in subsection (1) “or the Independent Commission Against Corruption”;

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(b) by omitting paragraph (c) of the definition of “prescribed offence” in subsection (1) and substituting the following paragraph:

“(c) an offence against a provision of Part VII B of the *Crimes Act 1914*.”.

(2) References in the Principal Act to a prescribed offence shall be taken to include references to an offence against section 86, 87, 88, 94 or 94A of the *Telecommunications Act 1975* committed before the commencement of section 90 of the *Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989*.

15

Exempt proceedings

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41. Section 5B of the Principal Act is amended:

(a) by omitting from paragraph (e) “or”;

(b) by adding at the end the following paragraphs:

“(g) a proceeding for the recovery of an amount due to a carrier in connection with the supply of a telecommunications service; or

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(h) a proceeding under section 13 of the *Mutual Assistance in Criminal Matters Act 1987* in relation to a criminal matter (within the meaning of that Act) that concerns an offence, against the laws of the foreign country that made the request resulting in the proceeding, that is punishable by imprisonment for life or for a period, or maximum period, of at least 3 years.”.

30

Preconditions for declaration

42. Section 35 of the Principal Act is amended by omitting from paragraph (1) (g) “(j)” and substituting “(h)”.

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Issue of warrant on telephone application

43. Section 50 of the Principal Act is amended:

(a) by omitting from subsection (1) “issuing a warrant” and substituting “completing and signing a warrant issued”;

40

(b) by omitting paragraph (1) (a).

Who may exercise authority conferred by warrant

44. Section 55 of the Principal Act is amended by adding at the end the following subsections:

5 “(4) Notwithstanding subsection (1), a designated technical officer may provide technical assistance to a member of the Australian Federal Police who is exercising the authority conferred by a warrant.

“(5) A reference in subsection (4) to the provision of technical assistance includes a reference to the doing of any act in connection with:

- 10 (a) the installation of equipment for the purpose of intercepting a communication in accordance with a warrant;
(b) the maintenance, testing or use of such equipment; or
(c) the removal of such equipment.

15 “(6) The Commissioner of Police or a person who is an approving officer under subsection (3) may, in writing, declare persons, or classes of persons, to be designated technical officers for the purposes of subsection (4).

“(7) A person may not be made the subject of a declaration under subsection (6) unless he or she is a member of the staff referred to in section 16 of the *Australian Federal Police Act 1979*.”

20 **Consequential amendments of Principal Act**

45. The Principal Act is further amended as set out in Schedule 2.

PART 14—AMENDMENTS OF THE TRADE PRACTICES ACT 1974

Principal Act

46. In this Part, “Principal Act” means the *Trade Practices Act 1974*¹³.

25 **Time for commencing actions**

47. Section 74J of the Principal Act is amended:

- 30 (a) by omitting from subparagraph (2) (b) (i) “or that other person” and substituting “referred to in that section”;
(b) by omitting from subparagraph (2) (b) (ii) “the consumer or that other person” and substituting “that consumer”.

Determination of applications for authorisations

48. Section 90 of the Principal Act is amended:

- 35 (a) by omitting from subsection (10) “(12), (13)” and substituting “(10A), (12), (13), (14)”;
(b) by inserting in paragraph (10) (a) “, (7A)” after “(7)”;
(c) by inserting after subsection (10) the following subsection:

“(10A) If, within the latest occurring 4 month period referred to in paragraph (10) (b) in relation to an application for an

authorisation, the Commission gives to the applicant a written notice requesting the applicant to give to the Commission additional information relevant to the determination of the application, the reference in that paragraph to 4 months shall be taken to be a reference to a period consisting of 4 months increased by the number of days in the period commencing on the day on which the notice is given to the applicant and ending on the day on which the applicant gives to the Commission such of the additional information as the applicant is able to provide.”;

5

(d) by omitting from subsection (14) “or (11), as the case may be,”.

10

SCHEDULE 1

Section 5

AMENDMENTS OF THE COMPLAINTS (AUSTRALIAN FEDERAL POLICE) ACT 1981 RELATING TO CAUTIONS AND ADMONITIONS

After paragraph 3 (3) (bb):

Insert the following paragraphs:

- “(bc) a reference to admonishing a member for a breach of discipline shall be construed as a reference to admonishing a member for a breach of discipline in accordance with regulations made under the *Australian Federal Police Act 1979*;
- (bd) a reference to a member being offered or accepting an admonition shall be construed as a reference to a member being offered or accepting, as the case may be, an admonition in accordance with regulations made under the *Australian Federal Police Act 1979*”.

Subsections 11 (1) and (2):

Omit “or cautioning”, substitute “, or offering a caution or an admonition to,”.

Subsection 11 (3):

Omit paragraphs (b) and (c), substitute the following paragraphs:

- “(b) that a member or members be offered a caution;
- (c) that a member or members be offered an admonition; or
- (d) that no action be taken by way of charging, or offering a caution or admonition to, a member or members;”.

Subsection 11 (7):

Omit “or cautioning” (wherever occurring), substitute “, or offering a caution or admonition to,”.

Paragraph 11 (9) (ba):

Omit the paragraph, substitute the following paragraphs:

- “(ba) a reference to the offering of a caution to a member shall be construed as a reference to the offering of a caution to a member for a breach of discipline;
- (bb) a reference to the offering of an admonition to a member shall be construed as a reference to the offering of an admonition to a member for a breach of discipline;”.

SCHEDULE 1—continued**Sections 12 and 13:**

Repeal the sections, substitute the following sections:

Notification of charges etc. to Ombudsman

“12. (1) Where, under section 11, a member is:

- (a) charged with an offence or breach of discipline; or
- (b) offered a caution or admonition for a breach of discipline;

the Commissioner shall notify the Ombudsman, in writing, that the member has been so charged or has been offered a caution or admonition, as the case requires.

“(2) Where:

- (a) a member is, under section 11, offered a caution or admonition for a breach of discipline; and
- (b) the member refuses to accept the caution or admonition;

the Commissioner shall notify the Ombudsman, in writing, that:

- (c) the member has refused the caution or admonition; and
- (d) the member has been charged with a breach of discipline.

Notification of charges etc. to complainant

“13. Where, under section 11, a member is charged with an offence or breach of discipline, or accepts a caution or admonition for a breach of discipline, the Commissioner shall, unless the identity of the complainant is unknown, as soon as practicable notify the complainant, in writing, that the member has been so charged, or has accepted the caution or admonition, and give to the complainant any comments the Commissioner wishes to make in relation to the charge, or the acceptance of the caution or admonition, as the case requires.”.

Paragraph 24 (1) (c):

Omit “or cautioned”, substitute “or offered a caution or admonition”.

Subsection 26 (3):

Omit “or cautioned”, substitute “or offered a caution or admonition”.

Paragraphs 36 (1) (c) and (2) (c):

Omit “or cautioned”, substitute “or offered a caution or admonition”.

Subsections 36 (3) and (3A):

Omit “or cautioned”, substitute “or offered a caution or admonition”.

Subsection 49 (4):

Omit “or cautioned”, substitute “or offered a caution or admonition”.

Paragraph 52 (2) (b):

Omit “or cautioned”, substitute “or offered a caution or admonition”.

SCHEDULE 1—continued

After section 66A:

Insert the following section:

Proceedings for charge where admonition not accepted

“66B. Where:

- (a) a member is offered an admonition for a breach of discipline; and
- (b) the member does not accept the admonition;

the Commissioner shall institute proceedings against the member in respect of the breach of discipline.”.

Subsection 67 (1):

Insert “or admonition” after “caution”.

SCHEDULE 2

Section 45

**CONSEQUENTIAL AMENDMENTS OF THE
TELECOMMUNICATIONS (INTERCEPTION) ACT 1979**

Subsection 5 (1) (definition of “certifying officer”):

- (a) Omit “or” (last occurring) from paragraph (c).
- (b) Add at the end the following word and paragraph:

“or (e) in the case of the Independent Commission Against Corruption—the Commissioner or an Assistant Commissioner of the Independent Commission Against Corruption;”.

Subsection 5 (1) (definition of “chief officer”):

- (a) Omit “or” from paragraph (c).
- (b) Add at the end the following word and paragraph:

“or (e) in the case of the Independent Commission Against Corruption—the Commissioner of the Independent Commission Against Corruption;”.

Subsection 5 (1) (definition of “officer”):

- (a) Omit “or” from paragraph (c).
- (b) Add at the end the following word and paragraph:

“or (e) in the case of the Independent Commission Against Corruption—an officer of the Independent Commission Against Corruption, being a person who is an officer as defined by the Independent Commission Against Corruption Act;”.

SCHEDULE 2—continued**Subsection 5 (1) (definition of “prescribed investigation”):**

Add at the end the following word and paragraph:

“or (c) in the case of the Independent Commission Against Corruption—means an investigation that the Independent Commission Against Corruption is conducting in the performance of its functions under the Independent Commission Against Corruption Act;”.

Subsection 5 (1) (definition of “relevant offence”):

(a) Omit “or” from paragraph (c).

(b) Add at the end the following word and paragraph:

“or (e) in the case of the Independent Commission Against Corruption—a prescribed offence that is an offence against a law of New South Wales and to which a prescribed investigation relates;”.

Subsection 5 (1):

Insert the following definitions:

“‘Independent Commission Against Corruption’ means the Independent Commission Against Corruption of New South Wales;

‘Independent Commission Against Corruption Act’ means the Independent Commission Against Corruption Act 1988 of New South Wales;”.

Paragraph 6A (1) (c):

Omit “or the Drug Crime Commission”, substitute “, the Drug Crime Commission or the Independent Commission Against Corruption”.

Paragraph 6L (2) (b):

Insert “or the Independent Commission Against Corruption” after “Commission”.

Subsection 39 (2):

(a) Omit “or” from paragraph (c).

(b) Add at the end the following word and paragraph:

“; or (e) in the case of the Independent Commission Against Corruption—an officer of that Commission.”.

NOTES

1. No. 21, 1981, as amended. For previous amendments, see No. 62, 1983; Nos. 72 and 165, 1984; No. 122, 1985; No. 168, 1986; and No. 141, 1987.
2. No. 12, 1914, as amended. For previous amendments, see No. 6, 1915; No. 54, 1920; No. 9, 1926; No. 13, 1928; No. 30, 1932; No. 5, 1937; No. 6, 1941; No. 77, 1946; No. 80, 1950; No. 10, 1955; No. 11, 1959; No. 84, 1960; No. 93, 1966; Nos.

NOTES—continued

- 33 and 216, 1973; No. 56, 1975; No. 37, 1976; Nos. 19 and 155, 1979; No. 70, 1980; No. 122, 1981; Nos. 67, 80 and 153, 1982; Nos. 91, 114 and 136, 1983; Nos. 10, 63 and 165, 1984; No. 193, 1985; Nos. 76, 102 and 168, 1986; Nos. 73, 120 and 141, 1987; and Nos. and , 1989.
3. No. 64, 1963, as amended. For previous amendments, see No. 216, 1973, No. 7, 1977; No. 129, 1979; No. 80, 1982; Nos. 39 and 114, 1983; and No. 63, 1988.
 4. No. 13, 1978, as amended. For previous amendments, see No. 120, 1987; and No. 99, 1988.
 5. No. 8, 1977, as amended. For previous amendments, see No. 155, 1979; No. 70, 1980; No. 120, 1987; and No. 63, 1988.
 6. No. 34, 1973, as amended. For previous amendments, see No. 114, 1983; and Nos. 5 and 63, 1988.
 7. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 19, 1914; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 19, 92, 116, 155, 177 and 180, 1979; Nos. 13, 15, 110 and 171, 1980; Nos. 45, 61, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 81, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; and Nos. 51, 76, 81, 104 and 141, 1987; Nos. 63, 66, 76, 99, 120 and 121, 1988; and No. , 1989.
 8. No. 4, 1905, as amended. For previous amendments, see No. 43, 1934; No. 80, 1950; No. 48, 1956; No. 28, 1963; No. 53, 1964; No. 80, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 31, 1974; No. 14, 1978; No. 139, 1979; Nos. 39 and 177, 1981; No. 91, 1983; No. 198, 1985; and No. 87, 1988.
 9. No. 156, 1976, as amended. For previous amendments, see Nos. 19 and 87, 1979; No. 61, 1981; No. 26, 1982; No. 191, 1983; Nos. 11, 72 and 165, 1984; Nos. 65 and 193, 1985; No. 76, 1986; No. 141, 1987; and Nos. 8 and 99, 1988.
 10. No. 119, 1988.
 11. No. 5, 1901, as amended. For previous amendments, see No. 15, 1928; No. 80, 1950; No. 54, 1964; and No. 216, 1973.
 12. No. 114, 1979, as amended. For previous amendments, see No. 181, 1979; Nos. 114 and 116, 1983; Nos. 6 and 116, 1984; Nos. 8 and 63, 1985; No. 102, 1986; Nos. 89 and 120, 1987; Nos. 5, 65 and 66, 1988; and No. , 1989.
 13. No. 51, 1974, as amended. For previous amendments, see Nos. 56 and 63, 1975; Nos. 88 and 157, 1976; Nos. 81, 111 and 151, 1977; Nos. 206 and 207, 1978; No.

NOTES—continued

73, 1980; Nos. 61 and 176, 1981; No. 80, 1982; No. 39, 1983; Nos. 63, 73 and 165, 1984; No. 65, 1985; Nos. 8, 17 and 168, 1986; Nos. 23 and 141, 1987; and Nos. 8, 20 and 87, 1988.

