

TELEPHONIC COMMUNICATIONS (INTERCEPTION).

No. 27 of 1960.

An Act to Prohibit the Interception of Telephonic Communications except where Specially Authorized in the Interests of the Security of the Commonwealth.

[Assented to 26th May, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

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| Short title. | 1. This Act may be cited as the <i>Telephonic Communications (Interception) Act</i> 1960. |
| Commencement. | 2. This Act shall come into operation on the day on which it receives the Royal Assent. |
| Interpretation. | 3.—(1.) In this Act, unless the contrary intention appears—
“communication” includes conversation, message and signal, and any part of a conversation, message or signal;
“officer of the Department” includes an employee in the Department;
“private telephone line” means a telephone line that is not connected to a telephone exchange;
“subscriber” means a person who is authorized by the Department to rent, provide or use a telephone service;
“telephone exchange” means a telephone exchange that is part of the telephone system, but does not include a switchboard or other apparatus installed at the premises of a subscriber;
“telephone line” means a wire or cable installed or maintained by or with the authority of the Department and used for telephonic communications, and includes any apparatus connected with such a wire or cable;
“telephone service” means a telephone service provided or used by or with the authority of the Department, and includes a private telephone line;
“the Department” means the Postmaster-General's Department;
“the Director-General of Security” means the Director-General of Security holding office under the <i>Australian Security Intelligence Organization Act</i> 1956; |

“ the Organization ” means the Australian Security Intelligence Organization;

“ the security of the Commonwealth ” means the protection of the Commonwealth and the Territories of the Commonwealth from acts of espionage, sabotage or subversion, whether directed from, or intended to be committed, within the Commonwealth or not;

“ the telephone system ” means the telephone system controlled by the Department;

“ warrant ” means a warrant issued under section six or seven of this Act.

(2.) Where a telephone service is provided by the Department for the use of a person or persons in the service of the Commonwealth (not being a telephone service to which that person is the subscriber or those persons are subscribers), the Commonwealth shall, for the purposes of this Act, be deemed to be the subscriber to that telephone service.

(3.) For the purposes of this Act, all private telephone lines shall be deemed to be part of the telephone system controlled by the Department.

(4.) A reference in this Act to the Attorney-General shall, at a time when the Attorney-General is absent from Australia or when, by reason of illness of the Attorney-General or for any other reason, the Director-General of Security cannot readily communicate with the Attorney-General, be read as including a reference to a Minister who has been authorized in writing by the Attorney-General to perform the functions of the Attorney-General under this Act at such a time.

4.—(1.) For the purposes of this Act, but subject to the next succeeding sub-section, interception of a communication passing over the telephone system consists of listening to or recording, by any means, such a communication in its passage over the telephone system without the knowledge of the person making the communication.

Meaning of interception.

(2.) Where a person lawfully on premises to which a telephone service is provided, by means of a telephone instrument or other device that is part of that service—

(a) listens to or records a communication passing over a telephone line that is part of that service, being a communication that is being made to or from that service; or

(b) listens to a communication passing over such a telephone line as a result of a technical defect in the telephone system or the mistake of an officer of the Department,

the listening or recording does not, for the purposes of this Act, constitute the interception of the communication.

(3.) For the purposes of the last preceding sub-section, two or more telephone services that are connected by the same telephone line to a telephone exchange shall be deemed to be the one telephone service.

Telephone
communications
not to be
intercepted.

5.—(1.) A person shall not—

(a) intercept;

(b) authorize, suffer or permit another person to intercept;
or

(c) do any act or thing that will enable him or another person to intercept,

a communication passing over the telephone system.

Penalty: Five hundred pounds or imprisonment for two years.

(2.) The last preceding sub-section does not apply to or in relation to—

(a) an act or thing done by an officer of the Department in the course of his duties for or in connexion with—

(i) the installation of a telephone line or of any apparatus or equipment or the operation or maintenance of the telephone system; or

(ii) the tracing of the origin of a telephone call during which a person has contravened or is suspected of having contravened or of being likely to contravene a provision of the *Post and Telegraph Act 1901–1950* or of any regulation in force under that Act; or

(b) the interception of a communication in pursuance of a warrant.

(3.) A person shall not divulge or communicate to another person, or make use of or record, any information obtained by intercepting a communication passing over the telephone system except—

(a) in or in connexion with the performance by the Organization of its functions or otherwise for the security of the Commonwealth; or

(b) in the performance of any duty of that first-mentioned person as an officer of the Department.

Penalty: Five hundred pounds or imprisonment for two years.

(4.) An offence against this section may be prosecuted either summarily or upon indictment, but—

(a) an offender is not liable to be punished more than once in respect of the same offence;

(b) the offence shall not be prosecuted summarily except in the name of the Attorney-General; and

(c) where the offence is prosecuted summarily, the court shall not impose a penalty exceeding a fine of One hundred pounds or imprisonment for six months.

(5.) Subject to sub-section (2.) of this section, this section extends to a person in the service of the Commonwealth.

6.—(1.) Where, upon receipt by the Attorney-General of a request by the Director-General of Security for the issue of a warrant under this section in respect of a telephone service, the Attorney-General is satisfied that—

Issue of
warrants by
Attorney-
General.

- (a) the telephone service is being or is likely to be—
 - (i) used by a person engaged in, or reasonably suspected by the Director-General of Security of being engaged in, or of being likely to engage in, activities prejudicial to the security of the Commonwealth; or
 - (ii) used for purposes prejudicial to the security of the Commonwealth; and
- (b) the interception by the Organization of communications passing to, from or over the telephone service will, or is likely to, assist the Organization in carrying out its function of obtaining intelligence relevant to the security of the Commonwealth,

the Attorney-General may, by warrant under his hand, authorize the Organization to intercept communications passing over any telephone line that forms part of the telephone service or connects the service to a telephone exchange.

(2.) A request by the Director-General of Security for the issue of a warrant in respect of a telephone service—

- (a) shall include a description of the service sufficient to identify it, including—
 - (i) the name, address and occupation of the subscriber, if any, to the service; and
 - (ii) the number, if any, allotted to the service by the Department; and
- (b) shall specify the facts and other grounds on which the Director-General of Security considers it necessary that the warrant should be issued and, where relevant, the grounds on which the Director-General of Security suspects a person of being engaged in, or of being likely to engage in, activities prejudicial to the security of the Commonwealth.

(3.) Where the Director-General of Security makes a request, otherwise than in writing, for the issue of a warrant in respect of a telephone service, he shall forthwith forward to the Attorney-General a request in writing in respect of the telephone service.

(4.) A warrant under this section shall specify the period for which it is to remain in force, being a period that does not exceed six months, but may be revoked by the Attorney-General at any time before the expiration of the period so specified.

(5.) The last preceding sub-section shall not be construed as preventing the issue of a further warrant in accordance with this section in respect of a telephone service in respect of which a warrant has, or warrants have, previously been issued.

Issue of
warrant by
Director-
General of
Security in
emergency.

7.—(1.) Where—

- (a) the Director-General of Security has forwarded or made a request to the Attorney-General for the issue of a warrant under the last preceding section in respect of a telephone service;
- (b) the Attorney-General has not, to the knowledge of the Director-General of Security, made a decision with respect to the request and has not, within the preceding period of three months, refused to issue a warrant in respect of the telephone service;
- (c) the Director-General of Security has not, within the preceding period of three months, issued a warrant under this section in respect of the telephone service; and
- (d) the Director-General of Security is satisfied—
 - (i) that the facts of the case would justify the issue of a warrant by the Attorney-General; and
 - (ii) that, if the interception by the Organization of communications passing to, from or over the telephone service does not commence before a warrant can be issued and made available by the Attorney-General, the security of the Commonwealth will be, or is likely to be, seriously prejudiced,

the Director-General of Security may, by warrant under his hand, authorize the Organization to intercept communications passing over any telephone line that forms part of the service or connects the service to a telephone exchange.

(2.) A warrant under this section shall specify the period for which it is to remain in force, being a period that does not exceed forty-eight hours, but may be revoked by the Attorney-General at any time before the expiration of the period so specified.

(3.) Where the Director-General of Security issues a warrant under this section, he shall forthwith furnish to the Attorney-General—

- (a) a copy of the warrant; and
- (b) a statement of the grounds on which he is satisfied as to the matter referred to in sub-paragraph (ii) of paragraph (d) of sub-section (1.) of this section.

8. The authority of the Organization under a warrant to intercept communications shall be exercised on behalf of the Organization only by the Director-General of Security and persons approved by him for the purposes of the warrant.

Persons
authorized to
intercept on
behalf of
Organization.

9. Where, before a warrant ceases to be in force, the Director-General of Security is satisfied that the grounds on which the warrant was issued have ceased to exist, he shall forthwith inform the Attorney-General accordingly and take such steps as are necessary to ensure that the interception of communications in pursuance of the warrant is discontinued.

Discontinuance
of interception
before
expiration
of warrant.

10. Where a record, whether in writing or otherwise, has been made of a communication intercepted in pursuance of a warrant and that communication will not, or is not likely to, assist the Organization in the performance of its functions, the Director-General of Security shall cause the record to be destroyed.

Records of
communications
not relevant to
security to be
destroyed.

11.—(1.) Where the Attorney-General issues or revokes a warrant, he shall—

Manner in
which warrants,
&c., to be
dealt with.

- (a) cause the Director-General of Security and the Director-General of Posts and Telegraphs to be informed forthwith of the issue of the warrant or of the revocation, as the case may be;
- (b) cause the warrant or the instrument of revocation, as the case may be, to be forwarded as soon as practicable to the Director-General of Security; and
- (c) cause a copy of the warrant or of the instrument of revocation, as the case may be, certified in writing by the Attorney-General to be a true copy of the warrant or of the instrument, to be forwarded as soon as practicable to the Director-General of Posts and Telegraphs.

(2.) The Attorney-General shall record on each request in writing for the issue of a warrant received by him from the Director-General of Security his decision with respect to the request and shall cause the request to be returned to the Director-General of Security.

(3.) Where the Director-General of Security issues a warrant, he shall—

- (a) cause the Director-General of Posts and Telegraphs to be informed forthwith of the issue of the warrant; and
- (b) cause a copy of the warrant certified in writing by the Director-General of Security to be a true copy of the warrant to be forwarded to the Director-General of Posts and Telegraphs.

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(4.) The Director-General of Security shall cause to be retained in the records of the Organization all warrants issued by him and all warrants and instruments of revocation received by him from, and all requests and other documents returned to him by, the Attorney-General.

Director-General of Security to report to Attorney-General on results of interception

12. The Director-General of Security shall furnish to the Attorney-General in respect of each warrant a report in writing on the extent to which the interception of telephonic communications in pursuance of the warrant has assisted the Organization in carrying out its functions of obtaining intelligence relevant to the security of the Commonwealth.

Powers and functions of Attorney-General not be delegated to Solicitor-General.

13. Section three of the *Solicitor-General Act* 1916 does not apply in relation to the powers and functions of the Attorney-General under this Act.
