



TELECOMMUNICATIONS (INTERCEPTION) ACT, 1988

No. 68 of 1988

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ELIZABETHAE II REGINAE

A.D. 1988

No. 68 of 1988

An Act for enabling the South Australian Police Force to be declared an agency for the purposes of the Telecommunications (Interception) Act 1979 of the Commonwealth; and for other related purposes.

[Assented to 3 November 1988]

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Telecommunications (Interception) Act, 1988*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act—

“ancillary offence” means an offence constituted by—

- (a) aiding, abetting, counselling or procuring the commission of an offence;
- (b) being, by act or omission, in any way directly or indirectly knowingly concerned in, or party to, the commission of an offence;
- (c) receiving or assisting a person who is, to the offender’s knowledge, guilty of an offence, in order to enable the person to escape punishment or to dispose of the proceeds of that offence;
- (d) attempting or conspiring to commit an offence;

or

- (e) inciting, urging, aiding or encouraging, or printing or publishing any writing that incites, urges, aids or encourages, the commission of an offence or the carrying on of any operations for or by the commission of an offence:

“the Authority” means the Police Complaints Authority:

“class 1 offence” means—

- (a) a murder or an offence of a kind equivalent to murder;

(b) a kidnapping, or an offence of a kind equivalent to kidnapping;

or

(c) an offence constituted by—

(i) aiding, abetting, counselling or procuring the commission of;

(ii) being, by act or omission, directly or indirectly, knowingly concerned in, or party to, the commission of;

or

(iii) conspiring to commit,

an offence of a kind described in paragraph (a) or (b):

“class 2 offence” means—

(a) an offence punishable by imprisonment for life or for a period, or maximum period, of at least seven years, where the particular conduct constituting the offence involved, involves, or would involve, as the case requires—

(i) loss of a person’s life or serious risk of loss of a person’s life;

(ii) serious personal injury or serious risk of serious personal injury;

(iii) serious damage to property in circumstances endangering the safety of a person;

(iv) trafficking in narcotic drugs;

(v) serious fraud;

or

(vi) serious loss to the revenue of the State;

or

(b) an offence constituted by—

(i) aiding, abetting, counselling or procuring the commission of;

(ii) being, by act or omission, directly or indirectly knowingly concerned in, or party to, the commission of;

or

(iii) conspiring to commit,

an offence of a kind described in paragraph (a):

“the Commissioner” means the Commissioner of Police in this State:

“the Commonwealth Act” means the *Telecommunications (Interception) Act 1979* of the Commonwealth:

“the Deputy Commissioner” means the Deputy Commissioner of Police in this State:

“in the possession of”, in relation to a record, includes in the custody of or under the control of:

“lawfully obtained information” means information obtained (whether before or after the commencement of section 6E of the Commonwealth Act)—

(a) by intercepting, otherwise than in contravention of section 7(1) of the Commonwealth Act, a communication passing over a telecommunications system;

or

(b) by virtue of a warrant issued under section 11 or 11A of the Commonwealth Act or Part IV of that Act:

“officer of the State” means an employee of the Crown or the holder of public or judicial office:

“original warrant” means a warrant issued otherwise than on a renewal application:

“police force” means the police force of this State:

“premises” includes—

(a) any land;

(b) any structure, building, aircraft, vehicle, vessel or place (whether built on or not);

and

(c) any part of such a structure, building, aircraft, vehicle, vessel or place:

“prescribed offence” means—

(a) a serious offence;

(b) an offence against section 7 (1) or 63 of the Commonwealth Act;

(c) an offence against sections 86, 87, 88, 94 or 94A of the *Telecommunications Act 1975* of the Commonwealth;

(d) any other offence punishable by imprisonment for life or for a period, or maximum period, of at least three years;

(e) an ancillary offence in relation to an offence of a kind described in paragraph (a), (b), (c) or (d):

“relevant proceeding” means—

(a) a proceeding by way of a prosecution for a prescribed offence that is an offence against the law of the State;

(b) a proceeding under the law of the State for the confiscation or forfeiture of property, or for the imposition of a pecuniary penalty, in connection with the commission of a prescribed offence;

(c) a proceeding for the taking of evidence pursuant to section 33A of the *Extradition (Commonwealth Countries) Act 1966* of the Commonwealth or section 27A of the *Extradition (Foreign States) Act 1966* of the Commonwealth, to the extent that the proceeding relates to a prescribed offence that is an offence against the law of the State;

(d) a proceeding for the extradition of a person from New Zealand to Australia, or from a State or Territory of the Commonwealth to this State, to the extent that the proceeding relates to a prescribed offence that is an offence against the law of the State;

(e) a police disciplinary proceeding against a member of the police force;

(f) any other proceeding (not being by way of prosecution for an offence), to the extent that it relates to alleged misbehaviour or alleged improper conduct of an officer of the State:

“relevant statistics”, in relation to applications of a particular kind, means—

(a) how many applications of that kind were made;

(b) how many applications of that kind were withdrawn or refused;

and

(c) how many warrants were issued on applications of that kind:

“renewal application” means an application by the police force for a warrant in respect of a telecommunications service, being an application made while a warrant issued in respect of that service is still in force:

“restricted record” means—

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

or

(b) a record obtained pursuant to section 11 or 11A of the Commonwealth Act or Part IV of that Act:

“serious offence” means an offence that is or has been a class 1 offence or a class 2 offence:

“warrant” means a warrant issued or to be issued to the police force under Part VI of the Commonwealth Act.

(2) A reference to an Act of the Commonwealth is a reference to that Act as amended from time to time.

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

Commissioner to keep certain records

4. The Commissioner must keep in the records of the police force—

(a) a copy, certified in writing by the Commissioner or Deputy Commissioner to be a true copy, of each warrant issued to the police force;

(b) a copy of each notification given to the Federal Commissioner of Police under section 53 (1) (b) of the Commonwealth Act;

(c) a copy, certified in writing by the Commissioner or Deputy Commissioner to be a true copy, of each instrument revoking a warrant issued to the police force;

(d) a copy of each certificate issued by the Commissioner or Deputy Commissioner under section 61 (4) of the Commonwealth Act;

(e) a copy of each authorization given by the Commissioner under section 66 (2) of the Commonwealth Act;

and

(f) each record made under section 5.

Commissioner to make certain records

5. The Commissioner must record in writing the following particulars as soon as practicable after the events to which they relate occur:

(a) particulars of each telephone application for a warrant;

(b) in relation to each application for a warrant, a statement as to whether—

(i) the application was withdrawn or refused;

or

(ii) a warrant was issued on the application;

- (c) in relation to each restricted record that has at any time been in the possession of the police force—
- (i) if the record was obtained by an interception under a warrant—particulars of that warrant;
 - (ii) particulars of each occasion on which the record came (whether by its creation or otherwise) to be in the possession of the police force;
 - (iii) particulars of each occasion (if any) on which the record ceased (whether by its destruction or otherwise) to be in the possession of the police force;
- and
- (iv) particulars of each agency, body or person (if any) from whom the police force received the record or to whom the police force supplied the record;
- (d) particulars of each use made by the police force of lawfully obtained information;
- (e) particulars of each communication of lawfully obtained information by a member of the police force to a person or body other than another member of the police force;
- and
- (f) particulars of each occasion on which, to the knowledge of a member of the police force, lawfully obtained information was given in evidence in a relevant proceeding.

Commissioner to report, etc., to Attorney-General

6. The Commissioner must give to the Attorney-General—

- (a) as soon as practicable after the issue or revocation of a warrant, a copy of the warrant or the instrument of revocation;
- (b) within three months after a warrant ceases to be in force, a written report of—
- (i) the use made by the police force of information obtained by interceptions under the warrant;
- and
- (ii) the communication of that information to persons other than members of the police force;
- and
- (c) as soon as practicable (but not later than two months) after each 30 June, such of the following information relating to the year ending on that 30 June as can be derived from the records of the police force:
- (i) the relevant statistics about such of the following applications as were made during that year:
 - (A) applications for warrants;
 - (B) telephone applications for warrants;
 - (C) renewal applications for warrants;
 - (D) applications for warrants that included a request that the warrant authorize entry onto premises;
 - (ii) how many warrants issued on applications made during that year specified conditions or restrictions relating to interceptions under the warrant;

- (iii) the categories of the serious offences specified (pursuant to section 49 of the Commonwealth Act) in warrants issued on applications made during that year;
- (iv) how many serious offences in each of those categories were so specified;
- (v) the average of the respective periods specified in original warrants issued on applications made during that year as the periods for which the warrants were to be in force;
- (vi) the average of the respective periods during which those warrants were actually in force;
- (vii) the average of the respective periods specified in warrants issued on renewal applications made during that year as the periods for which the renewals were to be in force;
- (viii) the average of the respective periods during which those renewals were actually in force;
- (ix) how many warrants issued on final renewal applications ceased to be in force during that year in each of the following categories:
 - (A) cessation more than 90 days but not more than 150 days after the day on which the original warrant was issued;
 - (B) cessation more than 150 days but not more than 180 days after the day on which the original warrant was issued;
 - (C) cessation more than 180 days after the day on which the original warrant was issued;
- (x) how many arrests were made during that year—
 - (A) in connection with the performance by the police force of its functions;and
 - (B) on the basis of information that was, or included, lawfully obtained information;
- (xi) where, according to the records of the police force, lawfully obtained information was given in evidence in proceedings for the prosecution of prescribed offences and those proceedings ended during that year—the categories of those prescribed offences;
- (xii) in relation to each of those categories—
 - (A) the number of offences in the category;
 - (B) the number of offences in the category in respect of which convictions were recorded;
- (xiii) such additional matters (if any) relating to the police force as are prescribed under the Commonwealth Act.

Restricted records

7. The Commissioner—

- (a) must keep any restricted record (whether made before or after the commencement of section 35 of the Commonwealth Act) that is in the possession of the police force in a secure place (except while it is being dealt with in accordance with this Act or the Commonwealth Act), being a place that is not accessible to persons other than those who are entitled to deal with it;

and

- (b) must forthwith destroy any such restricted record if the Commissioner is satisfied that the record is not likely to be required for a purpose connected with—
- (i) an investigation by the police force into the commission, or likely commission, of a prescribed offence;
 - (ii) the making of a decision by an authority, body or person as to whether or not to initiate a relevant proceeding;
 - (iii) a relevant proceeding;
 - (iv) the exercise by the Commissioner of the powers conferred by section 68 of the Commonwealth Act;
 - (v) an investigation of, or an inquiry into, alleged misbehaviour or alleged improper conduct of an officer of the State, being an investigation or inquiry under the law of the State or conducted by a member of the police force;
 - (vi) a report on such an investigation or inquiry;
 - (vii) the tendering of advice to the Governor to terminate, because of misbehaviour or improper conduct, the appointment of an officer of the State;
- or
- (viii) deliberations of the Executive Council of the State in connection with advice to the Governor to terminate, because of misbehaviour or improper conduct, the appointment of an officer of the State.

Inspection of records by Police Complaints Authority

8. (1) The Authority—

- (a) must, at least once in each period of six months, inspect the records of the police force for the purpose of ascertaining the extent of compliance with sections 4, 5 and 7;

and

- (b) must, not later than two months after completion of such an inspection, report in writing to the Attorney-General on the results of the inspection.

(2) If, as a result of an inspection under subsection (1), the Authority is of the opinion that a member of the police force has contravened the Commonwealth Act or that the Commissioner has contravened section 6 (a) or (b), the Authority—

- (a) must include a report on the contravention in the report under subsection (1);

and

- (b) may submit a report on the contravention to the appropriate officers of both Houses of Parliament to be laid before their respective Houses.

(3) Before making a report on a contravention under subsection (2), the Authority must give the Commissioner an opportunity to make comments in writing on the report and must include in or attach to the report any comments made.

Powers of Police Complaints Authority

9. (1) For the purposes of an inspection under section 8, the Authority, or an officer of the Authority authorized by the Authority for the purpose—

- (a) may, after notifying the Commissioner, enter at any reasonable time premises occupied by the police force;

(b) is entitled to have full and free access at all reasonable times to all records of the police force;

(c) is, notwithstanding any other law, entitled to make copies of, and to take extracts from, records of the police force;

and

(d) may require a member of the police force to give the Authority or authorized officer such information as the Authority considers necessary, being information that is in the member's possession, or to which the member has access, and that is relevant to the inspection.

(2) If the Authority has reason to believe that a member of the police force is able to give information relevant to an inspection under section 8, the Authority may, by written notice to the member—

(a) require the member to give the information, in writing, signed by the member, at a specified place and within a specified period;

(b) require the member to attend before a specified person at a specified place and within a specified period or at a specified time on a specified day, in order to answer questions relevant to the inspection.

(3) If the Authority has reason to believe that a member of the police force is able to give information relevant to an inspection under section 8 but does not know the member's identity, the Authority may, by written notice to the Commissioner, require the Commissioner or a person nominated by the Commissioner to attend before a specified person at a specified place and within a specified period or at a specified time on a specified day, in order to answer questions relevant to the inspection.

(4) Notwithstanding any other law, a person is not excused from giving information, answering a question, or giving access to a document, as and when required by or under this section, on the ground that it would contravene a law, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty.

(5) The following are not admissible in evidence against a person except in prosecution proceedings for an offence against section 10:

(a) information or an answer given by the person pursuant to this section;

(b) the fact that the person has given access to a document pursuant to this section;

or

(c) any information or thing (including a document) obtained directly or indirectly in consequence of the person having given information or an answer, or access to a document, pursuant to this section.

(6) The Commissioner must ensure that members of the police force provide the Authority with such assistance in relation to an inspection under section 8 as the Authority reasonably requires.

Offences

10. (1) A person who is required under section 9—

(a) to attend before a person;

(b) to furnish information;

or

(c) to answer a question,

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

Penalty: Division 6 fine or division 6 imprisonment.

(2) A person—

- (a) who, without reasonable excuse, hinders a person exercising powers under section 9;
or
- (b) who gives to a person exercising powers under section 9 information knowing it to be false or misleading in a material particular,

is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment.

Secrecy

11. Except as is required or authorized by this Act, the Authority and its officers must not, directly or indirectly, divulge or communicate information acquired pursuant to this Act.

Penalty: Division 5 fine or division 5 imprisonment.

Offences are summary

12. The offences constituted by this Act are summary offences.

Protection for Authority and persons acting under its direction

13. No liability will attach to the Authority or any person acting under the Authority's direction or authority for an act or omission in good faith and in the exercise, performance or discharge, or purported exercise, performance or discharge, of a power, function or duty under this Act.

Attorney-General to give copies of reports, etc., to Minister

14. The Attorney-General must, as soon as practicable after receiving a report under this Act or a copy of a warrant or of an instrument revoking a warrant, give a copy of that report, warrant or instrument of revocation to the Minister responsible for the administration of the Commonwealth Act.

Regulations

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