

Western Australia

**Telecommunications (Interception and Access)
Western Australia Act 1996**

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Telecommunications (Interception and Access) Western Australia Act 1996

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Western Australia

Telecommunications (Interception and Access) Western Australia Act 1996

An Act to enable the Corruption and Crime Commission and the Police Force to be declared agencies for the purposes of the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth and for related purposes.

*[Long title amended by No. 1 of 2000 s. 4; No. 78 of 2003 s. 74;
No. 2 of 2011 s. 4.]*

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Telecommunications (Interception and Access) Western Australia Act 1996*¹.

[Section 1 amended by No. 2 of 2011 s. 5.]

2. Commencement

This Act comes into operation on such day as is fixed by proclamation¹.

3. Interpretation

(1) In this Act, unless the contrary intention appears —

agency means —

- (a) the Australian Federal Police;
- (aa) the Corruption and Crime Commission;
- (b) the Australian Crime Commission;
- [(ba) deleted]*
- (c) the Police Force;
- (d) the Police Force of another State or a Territory in relation to which a declaration under section 34 of the Commonwealth Act is in force; or
- (e) any authority of this State or another State or a Territory if a declaration under section 34 of the Commonwealth Act is in force in relation to that authority;

certifying officer means —

- (aa) in relation to the Corruption and Crime Commission, the Commissioner as defined in section 3 of the *Corruption and Crime Commission Act 2003* or an officer of the Commission authorised to be a certifying officer under section 5AC(9) of the Commonwealth Act; or

[(a) deleted]

- (b) in relation to the Police Force, the Commissioner of Police or a Deputy Commissioner of Police;

chief officer means —

- (aa) in relation to the Corruption and Crime Commission, the Commissioner as defined in section 3 of the *Corruption and Crime Commission Act 2003*; or

[(a) *deleted*]

- (b) in relation to the Police Force, the Commissioner of Police;

Commissioner of Police means the Commissioner of Police appointed under the *Police Act 1892*;

Commonwealth Act means the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth;

Commonwealth Minister means the Minister administering the Commonwealth Act;

Corruption and Crime Commission has the meaning given to “Commission” in section 3 of the *Corruption and Crime Commission Act 2003*;

eligible authority means the Corruption and Crime Commission or the Police Force;

inspecting officer means a person prescribed by regulations as an inspecting officer for the purposes of this Act;

officer means —

- (aa) in relation to the Corruption and Crime Commission, an officer of the Commission as defined in section 3 of the *Corruption and Crime Commission Act 2003*; or

[(a) *deleted*]

- (b) in relation to the Police Force, a member of the Police Force;

Part 2-5 warrant means a warrant issued or to be issued under Part 2-5 of the Commonwealth Act;

Police Force means the Police Force of this State;

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principal inspector means an inspecting officer prescribed by regulations as the principal inspector for the purposes of this Act;

responsible Minister means —

(aa) in relation to the Corruption and Crime Commission, the Attorney General; or

[(a) deleted]

(b) in relation to the Police Force, the Minister;

warrant means a warrant issued under the Commonwealth Act.

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

[Section 3 amended by No. 1 of 2000 s. 5; No. 78 of 2003 s. 74; No. 74 of 2004 s. 74; No. 2 of 2011 s. 6.]

[3A. *Expired 16 Apr 2004³.*]

Part 2 — Functions of eligible authority

4. Eligible authority to keep documents connected with issue of warrants

The chief officer of an eligible authority is to cause to be kept in the authority's records —

- (a) each warrant issued to the authority; and
- (b) a copy of any description in writing given by the chief officer under section 59A(2) of the Commonwealth Act; and
- (c) each instrument revoking such a warrant; and
- (d) a copy of each certificate issued under section 61(4) of the Commonwealth Act by a certifying officer of the authority; and
- (e) each authorisation by the chief officer under section 66(2) of the Commonwealth Act.

[Section 4 amended by No. 1 of 2000 s. 9(1); No. 2 of 2011 s. 7.]

5. Other records to be kept by an eligible authority in connection with interceptions

- (1) The chief officer of an eligible authority is to cause —
 - (a) particulars of each telephone application for a Part 2-5 warrant made by the authority;
 - (b) in relation to each application by the authority for a Part 2-5 warrant, a statement as to whether —
 - (i) the application was withdrawn or refused; or
 - (ii) a warrant was issued on the application;
 - (ba) in relation to each Part 2-5 warrant whose authority is exercised by the authority, particulars of —
 - (i) the warrant;

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- (ii) the day on which, and the time at which, each interception under the warrant began;
 - (iii) the duration of each such interception;
 - (iv) the name of the person who carried out each such interception; and
 - (v) in relation to a named person warrant —each service to or from which communications have been intercepted under the warrant;
- (c) in relation to each restricted record that has at any time been in the possession of the authority, particulars of —
 - (i) if the restricted record is a record obtained by an interception under a warrant issued to the authority, that warrant;
 - (ii) each occasion when the restricted record came (whether by its making or otherwise) to be in the possession of the authority;
 - (iii) each occasion (if any) when the restricted record ceased (whether by its destruction or otherwise) to be in the possession of the authority; and
 - (iv) each agency or other body (if any) from or to which, or other person (if any) from or to whom, the authority received or supplied the restricted record;
- (d) particulars of each use made by the authority of lawfully obtained information;
- (e) particulars of each communication of lawfully obtained information by an officer of the authority to a person or body other than such an officer; and
- (f) particulars of each occasion when, to the knowledge of an officer of the authority, lawfully obtained information was given in evidence in a relevant proceeding in relation to the authority,

to be recorded in writing or electronically as soon as practicable after the happening of the events to which the particulars relate or the statement relates, as the case may be.

- (1a) If a Part 2-5 warrant is a named person warrant, the particulars referred to in subsection (1)(ba)(ii) must indicate the service in respect of which each interception occurred.
- (2) The chief officer of an eligible authority is to cause to be kept in the authority's records each record that the chief officer has caused to be made under this section.

[Section 5 amended by No. 1 of 2000 s. 9(1); No. 78 of 2003 s. 74(1); No. 2 of 2011 s. 8.]

6. Documents to be given by an eligible authority to the responsible Minister

- (1) The chief officer of an eligible authority is to give to the responsible Minister —
 - (a) a copy of each warrant issued to the authority, and of each instrument under section 52 or 57 of the Commonwealth Act revoking such a warrant, as soon as practicable after the issue or revocation of the warrant;
 - (b) within 3 months after a warrant issued to the authority ceases to be in force, a written report about —
 - (i) the use made by the authority of information obtained by interceptions under the warrant; and
 - (ii) the communication of that information to persons other than officers of the authority;and
 - (c) as soon as practicable, and in any event within 3 months, after each 30 June, a written report that sets out the information that —
 - (i) Division 2 of Part 2-8 of the Commonwealth Act requires to be set out in the Commonwealth

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Minister's report under that Division relating to the year ending on that 30 June; and

(ii) can be derived from the authority's records.

- (2) A report under subsection (1)(c) is to include a statement of the total expenditure (including expenditure of a capital nature) incurred by the eligible authority in connection with the execution of warrants during the year to which the report relates.
- (3) Nothing in any other law prevents the chief officer of an eligible authority from giving to the responsible Minister anything the chief officer is required by this section to give to that Minister.

[Section 6 amended by No. 1 of 2000 s. 6, 9(1) and 10; No. 2 of 2011 s. 9.]

7. Report to be given by State Minister to Commonwealth Minister

As soon as practicable after a report of a kind referred to in section 6(1)(b) or (c) is given to the responsible Minister, the responsible Minister is to give to the Commonwealth Minister a copy of the report.

[Section 7 inserted by No. 2 of 2011 s. 10.]

8. Keeping and destruction of restricted records

- (1) The chief officer of an eligible authority is to cause a restricted record (whether made before or after the commencement of section 35 of the Commonwealth Act) that is in the possession of the authority to be kept, except when it is being otherwise dealt with in accordance with the Commonwealth Act and this Act, in a secure place where it is not accessible to persons other than persons who are entitled so to deal with it.
- (2) The chief officer of an eligible authority is to cause a restricted record of a kind referred to in subsection (1) to be destroyed forthwith if the chief officer is satisfied that the restricted record

is not likely to be required for a permitted purpose in relation to the authority, other than a purpose connected with an inspection of the kind referred to in section 10 or with a report on such an inspection.

[Section 8 amended by No. 1 of 2000 s. 9(1).]

Part 3 — Functions of principal inspector

9. Functions, generally

The principal inspector may —

- (a) inspect an eligible authority's records in order to ascertain the extent of compliance by the authority's officers with Part 2;
- (b) report to the responsible Minister about the results of those inspections; and
- (c) do anything incidental or conducive to the performance of any of the preceding functions.

[Section 9 amended by No. 1 of 2000 s. 9(2) and 10.]

10. Regular inspections of an eligible authority's records

[(1) deleted]

- (2) The principal inspector is to inspect an eligible authority's records at least twice during each financial year in order to ascertain the extent to which the authority's officers have complied with Part 2 since the last inspection under this Part of the authority's records.
- (3) The principal inspector may at any time inspect an eligible authority's records in order to ascertain the extent to which the authority's officers have complied with Part 2 during any period.

[Section 10 amended by No. 1 of 2000 s. 7 and 9(2).]

11. Reports

[(1) deleted]

- (2) The principal inspector, as soon as practicable, and in any event within 3 months, after the end of each financial year, is to report to the responsible Minister in writing, in relation to an eligible authority, about the results of the inspections under

section 10(2), during that financial year, of the authority's records.

- (3) The principal inspector may report to the responsible Minister in writing at any time about the results of an inspection under this Part and is to do so if so requested by the responsible Minister.
- (4) If the principal inspector has given a report to the responsible Minister under subsection (1), (2) or (3), the principal inspector —
 - (a) is to notify the Commonwealth Minister, in writing, that the report has been given; and
 - (b) is to give a copy of the report to the chief officer of the eligible authority.

[Section 11 amended by No. 1 of 2000 s. 8, 9(1) and 10.]

12. Principal inspector may report on breaches

If, as a result of an inspection under this Part of an eligible authority's records, the principal inspector is of the opinion that an officer of the authority has contravened —

- (a) a provision of the Commonwealth Act; or
- (b) a requirement referred to in section 6(1)(a) or (b),

the principal inspector may include in the report on the inspection a report on the contravention.

[Section 12 amended by No. 1 of 2000 s. 9(2).]

13. Principal inspector's general powers

- (1) For the purposes of an inspection under this Part of an eligible authority's records, the principal inspector —
 - (a) may, after notifying the chief officer of the authority, enter at any reasonable time premises occupied by the authority;
 - (b) is entitled to have full and free access at all reasonable times to all records of the authority;

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- (c) despite any other law, is entitled to make copies of, and to take extracts from, records of the authority; and
 - (d) may require an officer of the authority to give the principal inspector any information that the principal inspector considers necessary, being information that is in the officer's possession, or to which the officer has access, and that is relevant to the inspection.
- (2) The chief officer of an eligible authority is to ensure that the authority's officers provide to the principal inspector any assistance in connection with the performance of the principal inspector's functions under this Part that the principal inspector reasonably requires.

[Section 13 amended by No. 1 of 2000 s. 9(1) and (2).]

14. Power to obtain relevant information

- (1) If the principal inspector has reason to believe that an officer of an eligible authority is able to give information relevant to an inspection under this Part of the authority's records, subsections (2) and (3) have effect.
- (2) The principal inspector may, by writing given to the officer, require the officer to give the information to the principal inspector —
- (a) by writing signed by the officer; and
 - (b) at a specified place and within a specified period.
- (3) The principal inspector may, by writing given to the officer, require the officer to attend —
- (a) before a specified inspecting officer;
 - (b) at a specified place; and
 - (c) within a specified period or at a specified time on a specified day,
- in order to answer questions relevant to the inspection.

- (4) If the principal inspector —
- (a) has reason to believe that an officer of an eligible authority is able to give information relevant to an inspection under this Part of the authority's records; and
 - (b) does not know the officer's identity,
- the principal inspector may, by writing given to the chief officer of the authority, require the chief officer, or a person nominated by the chief officer, to attend —
- (aa) before a specified inspecting officer;
 - (bb) at a specified place; and
 - (cc) within a specified period or at a specified time on a specified day,
- in order to answer questions relevant to the inspection.
- (5) The place, and the period or the time and day, specified in a requirement under this section are to be reasonable, with regard to the circumstances in which the requirement is made.

[Section 14 amended by No. 1 of 2000 s. 9(1).]

15. Principal inspector to be given information and access despite other laws

- (1) Despite any other law, a person is not excused from giving information, answering a question, or giving access to a document, as and when required by or under this Part, on the ground that giving the information, answering the question, or giving access to the document, as the case may be, 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, but —
- (a) the information, the answer, or the fact that the person has so given access to the document, as the case may be; and
 - (b) any information or thing (including a document) obtained as a direct or indirect consequence of giving

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the first-mentioned information, answering the question or giving access to the first-mentioned document, as the case may be,

is not admissible in evidence against the person except in a proceeding by way of a prosecution for an offence against section 23.

- (2) Nothing in any other law prevents an officer of an eligible authority from —
- (a) giving information to an inspecting officer (whether orally or in writing and whether or not in answer to a question); or
 - (b) giving to an inspecting officer access to a record of the authority,

for the purposes of an inspection under this Part of the authority's records.

- (3) Nothing in any other law prevents an officer of an eligible authority from making a record of information, or causing a record of information to be made, for the purposes of giving the information to a person as permitted by subsection (2).

[Section 15 amended by No. 1 of 2000 s. 9(1).]

16. Dealing with information for the purposes of inspection and report

If —

- (a) information is given or communicated to an inspecting officer, as permitted by section 15(2) or this section, for the purposes of an inspection, or of a report on an inspection, under this Part of an eligible authority's records; or
- (b) an inspecting officer obtains information as a result of being given access to a record of an eligible authority, as permitted by section 15(2), for the purposes of an inspection under this Part of the authority's records,

the inspecting officer may, despite any other law, communicate to another inspecting officer, make use of, or make a record of, the information for the purposes of an inspection, or of a report on an inspection, under this Part of the authority's records.

[Section 16 amended by No. 1 of 2000 s. 9(1) and (2).]

17. Inspecting officer not to be sued

Subject to any provisions applying by virtue of section 19, an inspecting officer, or a person acting under an inspecting officer's direction or authority, is not liable to an action, suit or proceeding for or in relation to an act done, or omitted to be done, in good faith in the performance, or the purported performance, of a function conferred by this Part.

18. Delegation by principal inspector

The principal inspector may delegate to another inspecting officer any of the principal inspector's functions under this Act, other than —

- (a) this power of delegation; and
- (b) a power to report to the responsible Minister.

[Section 18 amended by No. 1 of 2000 s. 10.]

19. Application of *Parliamentary Commissioner Act 1971* if inspecting officer is Parliamentary Commissioner or an officer of the Commissioner

- (1) Anything that an inspecting officer has done or omitted to do under this Part is not to be included in a report under section 25 or 27 of the *Parliamentary Commissioner Act 1971*.
- (2) Subject to section 15 of this Act, sections 23 and 30(4) of the *Parliamentary Commissioner Act 1971* apply to information obtained as an inspecting officer and so apply as if —
 - (a) a reference in section 23 to information did not include a reference to lawfully obtained information;

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- (b) subsections (1a) to (1f) of section 23 were omitted; and
 - (c) a reference in those sections to that Act were a reference to this Act.
- (3) Section 29 of the *Parliamentary Commissioner Act 1971* does not apply in relation to the exercise or proposed exercise of a function of an inspecting officer under this Part.
- (4) In this section —
- inspecting officer** means an inspecting officer who is —
- (a) the Parliamentary Commissioner; or
 - (b) an officer of the Commissioner within the meaning of the *Parliamentary Commissioner Act 1971*;
- Parliamentary Commissioner** means —
- (a) the Parliamentary Commissioner for Administrative Investigations holding office under the *Parliamentary Commissioner Act 1971*;
 - (b) the Acting Parliamentary Commissioner for Administrative Investigations appointed under section 7(1) of the *Parliamentary Commissioner Act 1971*; or
 - (c) the Deputy Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971* when acting in the office of the Parliamentary Commissioner for Administrative Investigations under section 6A(2) of that Act.

20. Exchange of information between principal inspector and Commonwealth Ombudsman

- (1) The principal inspector may give information that —
- (a) relates to a Commonwealth agency; and
 - (b) was obtained by the principal inspector under this Act,
- to the Ombudsman.

- (2) The principal inspector may only give information to the Ombudsman under subsection (1) if the principal inspector is satisfied that the giving of the information is necessary to enable the Ombudsman to perform the Ombudsman's functions in relation to the Commonwealth agency.
- (3) The principal inspector may receive from the Ombudsman information relevant to the performance of the principal inspector's functions under this Act.

Part 4 — Miscellaneous

21. **Copies of reports for Commonwealth Minister**

As soon as practicable after a report on an inspection of the kind referred to in section 11 is given to the responsible Minister, the responsible Minister is to give the Commonwealth Minister a copy of the report.

[Section 21 amended by No. 1 of 2000 s. 10.]

22. **Disclosure by persons under the Minister's administration**

- (1) A person, other than an inspecting officer, engaged in the administration of this Act must not disclose any information or record obtained by the person in the administration of this Act, unless the disclosure is made —
- (a) in accordance with the Commonwealth Act; or
 - (b) for the purpose of discharging the person's functions under this Act.

Penalty: Imprisonment for 2 years.

- (2) In subsection (1) —
inspecting officer has the same meaning as it has in section 19.

23. **Offences relating to inspections under Part 3**

- (1) A person must not, without reasonable excuse, refuse or fail —
- (a) to attend before a person;
 - (b) to give information; or
 - (c) to answer a question,
- when required under section 14 to do so.
- (2) A person must not —
- (a) without reasonable excuse, wilfully obstruct, hinder or resist a person in connection with the exercise of the principal inspector's functions under Part 3; or

- (b) give to an inspecting officer, in connection with an inspection under Part 3, information or a statement that the first-mentioned person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

24. Regulations

The Governor may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Notes

¹ This is a compilation of the *Telecommunications (Interception and Access) Western Australia Act 1996* and includes the amendments made by the other written laws referred to in the following table ³. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Telecommunications (Interception) Western Australia Act 1996</i> ²	44 of 1996	16 Oct 1996	25 Dec 1996 (see s. 2 and <i>Gazette</i> 24 Dec 1996 p. 7099)
<i>Telecommunications (Interception) Western Australia Amendment Act 2000</i>	1 of 2000	28 Mar 2000	10 May 2000 (see s. 2 and <i>Gazette</i> 9 May 2000 p. 2235)
<i>Royal Commission (Police) Act 2002</i> s. 3(3) ³ & Pt. 9	10 of 2002	28 Jun 2002	Pt. 9: 28 Jun 2002 (see s. 2); s. 3(3): 16 Apr 2004 (see the <i>Royal Commission (Police) Order 2004</i> published in <i>Gazette</i> 16 Apr 2004 p. 1214)
Reprint 1: The <i>Telecommunications (Interception) Western Australia Act 1996</i> as at 22 Aug 2003 (includes amendments listed above except s. 3(3) of the <i>Royal Commission (Police) Act 2002</i>)			
<i>Corruption and Crime Commission Amendment and Repeal Act 2003</i> s. 74	78 of 2003	22 Dec 2003	s. 74(1): 1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723) s. 74(2): 7 Jul 2004 (see s. 2 and <i>Gazette</i> 6 Jul 2004 p. 2697)
<i>Australian Crime Commission (Western Australia) Act 2004</i> s. 74	74 of 2004	8 Dec 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Telecommunications (Interception) Western Australia Amendment Act 2011</i> Pt. 2	2 of 2011	1 Mar 2011	2 Jul 2011 (see s. 2(b) and <i>Gazette</i> 1 Jul 2011 p. 2713)

² Now known as the *Telecommunications (Interception and Access) Western Australia Act 1996*; short title changed (see note under s. 1).