

TELECOMMUNICATIONS INTERCEPTION ACT 1979 – ANNUAL REPORT
ELIGIBLE AUTHORITY QUESTIONNAIRE – YEAR ENDING 30 JUNE 2001

General Instructions

Division 2 of Part IX of the Telecommunications (Interception) Act 1979 (the TI Act) requires that the Attorney-General prepare each year a report providing details in relation to the interception of telecommunications for law enforcement purposes. The Attorney-General's Department is currently preparing the report under that Division for the year ending 30 June 2001.

The Annual Report Questionnaire has been prepared to elicit from each eligible authority the necessary information to comply with the reporting requirements prescribed by Part IX of the TI Act and to assist in representing the relevant data in a consistent manner across law enforcement agencies.

All questions relate to matters occurring between 1 July 2000 and 30 June 2001. In completing the questionnaire, an answer should be provided in all shaded boxes. Where an item is not applicable, the entry should be marked 'N/A'. If it is not possible to answer a question, an explanation should be provided. Any information to supplement answers provided in the questionnaire may be provided in an attachment.

The following passages are intended to serve as a guide to the completion of the questionnaire.

1 Arrests made

Paragraph (102)(1)(a) of the TI Act requires that the annual report set out for each agency or authority the number of arrests made during the year in connection with the performance of the agency's functions on the basis of information that was or included lawfully obtained information.

2 Prosecutions and convictions

Paragraphs 102(1)(b)-(c) of the TI Act requires that the annual report set out for each agency or authority the number of proceedings by categories of prescribed offences which ended during the reporting year in which lawfully obtained information was given in evidence, and of those, the number in which convictions were recorded.

The information required from each agency in order to comply with the reporting requirement is as follows:

- 1 The number of prosecutions for each category of prescribed offences ending during the reporting year in which lawfully obtained information was given in evidence.
- 2 The number of prosecutions for each category of prescribed offences in respect of which convictions were recorded

Prescribed classes of offences are outlined in the respective definitions of class 1 and class 2 offences provided in sections 5 and 5D of the TI Act. The categories have been reproduced in abbreviated form in the Questionnaire.

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Section 5 of the TI Act provides that:

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;
- (c) a narcotics offence; or
- (d) an offence constituted by:
 - (i) aiding, abetting, counselling or procuring the commission of;
 - (ii) being, by act or omission, in any way, directly or indirectly, knowingly concerned in, or party to, the commission of; or
 - (iii) conspiring to commit;
an offence of a kind referred to in paragraph (a), (b) or (c);

and, except for the purposes of an application for a warrant by an agency other than the Authority, includes an offence in relation to which the Authority is conducting a special investigation within the meaning of the Authority Act.

Section 5D of the TI Act provides that:

- (2) An offence is a ***class 2 offence*** if:
 - (a) it is an offence punishable by imprisonment for life or for a period, or maximum period, of at least 7 years; and
 - (b) 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; or
 - (ii) serious personal injury or serious risk of serious personal injury; or
 - (iii) serious damage to property in circumstances endangering the safety of a person; or
 - (iv) trafficking in prescribed substances; or
 - (v) serious fraud; or
 - (vi) serious loss to the revenue of the Commonwealth, a State or the Australian Capital Territory; or
 - (vii) bribery or corruption of, or by:
 - (A) an officer of the Commonwealth;
 - (B) an officer of a State; or
 - (C) an officer of a Territory.

Offences involving planning and organization

- (3) An offence is also a ***class 2 offence*** if it is an offence punishable by imprisonment for life or for a period, or maximum period, of at least 7 years, where the offence:
 - (a) involves 2 or more offenders and substantial planning and organization; and
 - (b) involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques; and
 - (c) is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and
 - (d) consists of, or involves, any of the following:
 - (i) theft;
 - (ii) handling of stolen goods;
 - (iii) tax evasion;

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- (iv) currency violations;
- (v) extortion;
- (vi) bribery or corruption of, or by:
 - (A) an officer of the Commonwealth; or
 - (B) an officer of a State; or
 - (C) an officer of a Territory;
- (vii) bankruptcy violations;
- (viii) company violations;
- (ix) harbouring criminals;
- (x) armament dealings;
- (xi) sexual offence against a person who is under 16 (including an offence against Part IIIA of the Crimes Act 1914);
- (xii) an immigration offence.

Money laundering offences etc.

- (4) An offence is also a **class 2 offence** if it is an offence against any of the following provisions:

- (a) section 81 or 83 of the Proceeds of Crime Act 1987;
- (b) section 73 of the Confiscation of Proceeds of Crime Act 1989 of New South Wales;
- (c) section 41Q of the Crimes (confiscation of Profits) Act 1986 of Victoria;
- (d) section 64 of the Crimes (Confiscation of Profits) Act 1989 of Queensland;
- (e) section 563A of the Criminal Code of Western Australia;
- (f) section 10b of the Crimes (Confiscation of Profits) Act, 1986 of South Australia;
- (g) section 67 of the Crime (Confiscation of Profits) Act 1993 of Tasmania;
- (h) section 74 of the Proceeds of Crime Act 1991 of the Australian Capital Territory.

Offence against Part VIA of the Crimes Act 1914

- (5) An offence is also a **class 2 offence** if it is an offence against Part VIA of the Crimes Act 1914.

Offences connected with other class 2 offences

- (6) An offence is also a class 2 offence if it is an offence constituted by:
- (a) aiding, abetting, counselling or procuring the commission of; or
 - (b) being, by act or omission, in any way, directly or indirectly, knowingly concerned in, or party to, the commission of; or
 - (c) conspiring to commit;
- an offence that is a class 2 offence under any of the preceding subsections.

Further Information

In addition to information required to satisfy the reporting requirements imposed by Part IX of the TI Act, the following information is required in order to comply with government guidelines on the preparation of annual reports on the operation of Acts.

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Judicial decisions and alternative outcomes

In addition, any further relevant material on the use of intercepted information is sought. This final category is of particular relevance to non-prosecuting agencies, who should provide details of alternative outcomes achieved employing information obtained under the TI Act.

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Details of other noteworthy prosecutions involving evidence obtained under the Act:

Nil

Details of alternative outcomes or other relevant material:

For the year ended 30 June 2000, the Anti-Corruption Commission reported –

“During the year the Anti-Corruption Commission investigated allegations of corruption and misconduct by members of the Western Australia Police Service. This investigation commenced in November 1999 and involved the use of telecommunications interception records originally obtained by the National Crime Authority in 1992 and 1995 and by the Australian Federal Police in 1994.

While the investigation covered a number of issues, it was largely concerned with the relationship between certain police officers and known criminal elements in Western Australia for a period that an associate of the criminals worked with, and provided information to, police. The informant was admitted into the Western Australia Police Witness Protection program, given a new identity and moved to Queensland.

The informant’s new identity became known to one or more police officers who passed this information to known criminal elements in Western Australia. He was subsequently found dead as the result of a heroin overdose. There are concerns and considerable public speculation that the informant’s death may not have been accidental or self induced.

An extensive report is currently being prepared by the Commission.

The use of telecommunications interception records has been of critical importance in progressing this investigation.”

During 2000/2001 a Special Investigation was held under the provisions of the Anti-Corruption Commission Act into the above matter.

A Coronial enquiry was also conducted in Queensland during the year relative to the death of the informant.

Considerable public speculation still exists in WA regarding this matter and the Anti-Corruption Commission remains committed to achieving an identifiable outcome or outcomes.

The use of intercepted material continued to be a benefit in progressing this investigation.

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Arrests made – s102(1)(a)

Number of arrests on the basis of lawfully obtained information Nil

Prosecutions and convictions – s102(1)(b)-(c)

Prosecutions

Convictions

Class 1 offences

Murder Nil

Kidnapping Nil

Narcotics offence Nil

Class 2 offences

Loss of life Nil

Serious personal injury Nil

Serious damage to property endangering the safety of a person Nil

Trafficking in prescribed substances Nil

Serious fraud Nil

Serious loss of revenue to the Commonwealth, a State or the Act Nil

Bribery or corruption of or by Commonwealth, State or Territory officer Nil

Offences involving planning and organization Nil

Money laundering Nil

Part VIA Crime Act (computer offences) Nil

Other prescribed offences

7(1) or 63 Telecommunications (Interceptions) Act 1979 Nil

Part VIIB Crimes Act 1914 (telecommunications offences) Nil

Offence punishable by life imprisonment or offence punishable by Nil

a maximum of 3 years imprisonment or more

Judicial decisions and alternative outcomes

Details of relevant judicial decisions relating to the TI Act or involving evidence obtained under the Act during the reporting year:

Nil