TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 1983

Date Introduced: 1 December 1983
House: Senate
Presented by: Senator G.J. Evans, Attorney-General

Short Digest of Bill

Purpose

To make specific provisions for communication to inquiries presently being conducted in New South Wales by Mr Justice Cross, of information which has been obtained by the lawful interception of telecommunications under Commonwealth legislation.

Background

The Telecommunications (Interception) Act 1979 permits, in certain circumstances, interception of communications passing over all telecommunications systems. It replaced the previous Telephonic Communications (Interception) Act 1960 which dealt only with interception of information passing over the telephone system.

Under the Constitution, laws relating to telecommunications is a Commonwealth preserve (sub-51(v)). The Listening Devices Act 1969 (NSW) prohibits the use of listening devices, widely defined as any device capable of being used to hear, record or listen to a private conversation, as defined, simultaneously with its taking place, except where authorized by specified police officers.

The New South Wales offence specifically exempts use of such devices authorized under certain Commonwealth legislation. It further appears that the NSW legislation could not authorize any form of telecommunications interception which is prohibited by the Commonwealth Act.

The Telecommunications (Interception) Act 1979 prohibits interception of communications passing over a telecommunications system (section 7). Part IIII permits the Attorney-General to issue a warrant authorizing interception of telecommunications by the Australian Security Intelligence Organization (ASIO). In an emergency, the Director-General of ASIO may issue a warrant effective for up to 48 hours.
Part IV provides for issue by a Judge of a warrant to intercept for purposes of narcotics investigations.

It was reported that information obtained from telephone tapping in connection with a continuing international narcotics investigation may be relevant to allegations against the former N.S.W. Minister for Corrective Services, Mr Jackson[1].

The N.S.W. Government moved to commence an inquiry into the allegations. Following some criticism of the appropriateness of Royal Commissions, the N.S.W. Parliament legislated in the Special Commissions of Inquiry Act (NSW) 1983 for initiation of three separate inquiries by Mr Justice Cross of the N.S.W. Supreme Court. The inquiry differs from a Royal Commission. Under section 9(3) of the N.S.W. Act the Commissioner "shall only receive as evidence, and (as far as practicable) only permit to be given in evidence, matter that, in the opinion of the Commissioner, would be likely to be admitted into evidence in relevant criminal proceedings".

The three inquiries conducted by Mr Justice Cross began on 11 November 1983 and respectively relate to the Bottom and Sinclair allegations, for report by 17 January, and the allegations against Mr Jackson for report by 28 February[2].

The Bill would permit communication of information obtained by Commonwealth-authorized telecommunications interception but is quite specific in that it authorizes communication only to the Cross inquiries.

Main Provisions

The Bill would commence with Royal Assent. It adds section 7A to the Telecommunications (Interception) Act 1979, specifying the procedure to be followed. The person conducting the specified inquiry may request the Attorney-General to communicate information relevant to a notified office, being an offence against a Commonwealth State or Territory law punishable by imprisonment for life or 3 or more years. The Attorney-General may direct the Commissioner of Police to ascertain whether lawfully obtained interception information may be relevant to an inquiry, and the Commissioner in such a case is required to communicate the information to the Attorney-General, who may communicate it to the person conducting the inquiry, possibly upon conditions, and must then notify the Parliament. It is possible with the approval in writing of the Attorney-General under subsection 7A(7), that information so transferred may be published.
Subsection 7A(11) excludes from judicial review by any court or body all decisions made by the Attorney-General under Section 7A.

For further information, if required, contact:

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References

2. The Australian, 8 November 1983.