Date Introduced: 8 March 1979
House: Senate
Presented by: Senator the Hon. Peter Durack, Attorney-General

Short Digest of Bill

Purpose

To repeal and replace the present Telephonic Communications (Interception) Act 1960 so as to enable A.S.I.O. and Customs to intercept information passing over all telecommunications systems in certain circumstances.

Background

In respect of the operations of A.S.I.O., this Bill complements the provisions of the Australian Security Intelligence Organisation Bill 1979 in giving A.S.I.O. statutory sanction, in certain circumstances to intercept communications passing over all telecommunications systems. The present Act, the Telephonic Communications (Interception) Act 1960 deals only with interception of information passing over the telephone system. According to the Attorney-General these new expanded powers are in accord with the recommendations of the Hope Report. It has also been found necessary to apply these powers in the investigation of narcotics offences by Customs officers.

Main Provisions

Clause 5 provides for the relevant definitions. Clause 6 defines interception to mean the listening to or recording, by any means, of communications passing over the telecommunications system without the knowledge of the person making the communication.

Clause 7(1) makes it an offence to intercept or to enable a person to intercept a communication. However, subclause (2) provides that it is not an offence where:

(a) it is done by an officer of the Telecommunications Commission in the course of his duty; or

(b) it is done in pursuance of a warrant.
Sub-clause (4) prohibits the divulging of information obtained by interception except in the performance of A.S.I.O.'s functions, for the purpose of narcotics inquiries or by an officer of Telecom in the performance of his duties. In addition, sub-clause (5) enables the Director-General of A.S.I.O. and the Comptroller-General of Customs to pass on to the police, information obtained by interception that is relevant to a Commonwealth offence punishable by more than 3 years imprisonment. The Director-General may also pass on information, relating to narcotic offences to Customs and the Comptroller-General may pass on information relating to activities prejudicial to security, to A.S.I.O. It is also provided that where information concerns matters outside Australia and the Director-General is satisfied that the national interest requires the communication, he may pass that information on to the relevant Minister or Department or to the Office of National Assessments. As well, paragraph 7(5)(c) deals with communication by a police officer to another police officer of information received under this clause. Sub-clause (6) provides limitations on the use that can be made in legal proceedings of the information obtained by interception.

Clause 8 provides for the issue of a warrant to intercept communications by A.S.I.O. Having been requested by the Director-General, the Attorney-General may, where he is satisfied that the telecommunications service is being used by a person engaged in activities prejudicial to security and interception will aid in the performance of A.S.I.O.'s functions, authorise the issue of a warrant to intercept. Sub-clause (2) requires the Director-General to present all the relevant facts when seeking an authorisation. A warrant may not be issued for more than 6 months but may be reissued.

Clause 9 makes similar provision for the Attorney-General to authorise a warrant to intercept by the Comptroller-General of Customs for the purpose of narcotics inquiries.

Clause 10 permits the Director-General of A.S.I.O. to issue a warrant to intercept, without the prior approval of the Minister, in emergency situations. However, this power cannot be exercised except when certain specified conditions exist. Similarly clause 11 allows the Comptroller-General of Customs to issue a warrant without prior ministerial approval, in stipulated emergency situations.

Clause 12 makes it an offence for an officer of A.S.I.O. or Customs to seek, and an officer of Telecom to grant, access to the contents of a telegram, except in pursuance of a warrant. Sub-clause (4) empowers the
Attorney-General to issue a warrant authorising Telecom to inspect and make copies of telegrams and to furnish copies to the Director-General of A.S.I.O. However, the Attorney-General must be satisfied that the person involved in the telegram is engaged in activities prejudicial to security and that A.S.I.O. needs access to it to perform its functions. Sub-clause (5) makes similar provision for warrants in relation to narcotics inquiries by the Comptroller-General.

Sub-clauses (6) and (7) provide for the issue of warrants in relation to telegrams by the Director-General of A.S.I.O. and the Comptroller-General of Customs respectively, in cases of emergency, without prior Ministerial approval. The restrictions on this are similar to those applying under clause 10 in relation to telecommunications interception.

Clause 14 oblige the Director-General of A.S.I.O. and the Comptroller-General of Customs to inform the Attorney-General and discontinue interception when the grounds on which a warrant was issued have ceased to exist. Clause 15 oblige both officers to destroy records or copies of intercepted communications when they become irrelevant to their functions.

Clause 16 requires the Attorney-General, the Director-General and the Comptroller-General, when they issue or revoke a warrant, to inform, among other persons, the Managing-Director of Telecom and to give him a copy of the warrant. The Director-General, the Comptroller-General and the Managing-Director of Telecom are also required to retain copies of all warrants.

Clause 18 oblige the Director-General and the Comptroller-General respectively to provide a report within 3 months to the Attorney-General on the results of interception under each warrant.