

Serial 326

Telecommunications (Interception) Northern Territory Bill 2001

Mr Reed

**A BILL
for
AN ACT**

to enable the Police Force of the Northern Territory to be declared an agency for the purposes of the *Telecommunications (Interception) Act 1979* of the Commonwealth and for related purposes

C C C C

C C

NORTHERN TERRITORY OF AUSTRALIA
TELECOMMUNICATIONS (INTERCEPTION) NORTHERN TERRITORY
ACT 2001

No. of 2001

TABLE OF PROVISIONS

Section

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2 – KEEPING OF RECORDS OF TELECOMMUNICATIONS
INTERCEPTIONS

4. Records connected with issue of warrants
5. Other records connected with an interception
6. Documents to be given to Minister
7. Documents to be given to Commonwealth Minister
8. Keeping and destruction of restricted records

PART 3 – INSPECTIONS OF RECORDS AND REPORTS BY
OMBUDSMAN

Division 1 – Inspections and reports

9. General power to inspect and report on records
10. Regular inspections of records
11. Report on contravention of Part 2
12. Notification of report

Division 2 – Powers of inspecting officers

13. General powers for inspections

Division 3 – Information arising from inspection

14. Use of information
15. Protection of Ombudsman and inspecting officers from liability
16. Confidentiality of information obtained under warrant

PART 4 – MISCELLANEOUS

17. Report to Commonwealth Minister
18. Confidentiality
19. Offences
20. Delegation by Ombudsman
21. Regulations



NORTHERN TERRITORY OF AUSTRALIA

No. of 2001

AN ACT

to enable the Police Force of the Northern Territory to be declared an agency for the purposes of the *Telecommunications (Interception) Act 1979* of the Commonwealth and for related purposes

[Assented to 2001]
[Second reading 2001]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Telecommunications (Interception) Northern Territory Act 2001*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Interpretation

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

"Commissioner" means the Commissioner of Police for the Northern Territory;

"Commonwealth Act" means the *Telecommunications (Interception) Act 1979*;

Telecommunications (Interception) Northern Territory Act 2001

"Commonwealth Minister" means the Minister administering the Commonwealth Act;

"Commonwealth Ombudsman" means the office established by the *Ombudsman Act 1976* of the Commonwealth;

"contravene" includes fail to comply with;

"inspecting officer" means –

- (a) the Ombudsman; or
- (b) an employee (within the meaning of the *Public Sector Employment and Management Act*) to whom the Ombudsman has delegated a function or functions in relation to an inspection;

"inspection" means an inspection under Division 1 of Part 3;

"Ombudsman" means the Ombudsman for the Northern Territory appointed under the *Ombudsman (Northern Territory) Act*;

"Police Force" means the Police Force of the Northern Territory established by the *Police Administration Act*,

"possession" includes custody and control.

(2) In this Act, unless the contrary intention appears, each of the following expressions has the same meaning as in the Commonwealth Act:

- (a) agency;
- (b) certifying officer;
- (c) Minister;
- (d) premises;
- (e) restricted record;
- (f) warrant;
- (g) any other expression not defined in subsection (1) but defined in the Commonwealth Act.

(3) A reference to a member of the Police Force is to be read as a reference to an officer of the Police Force for the purposes of the Commonwealth Act.

PART 2 – KEEPING OF RECORDS OF TELECOMMUNICATIONS INTERCEPTIONS

4. Records connected with issue of warrants

The Commissioner must keep as records of the Police Force –

- (a) each warrant issued to the Police Force;
- (b) a copy of each notification of the issue of a warrant given under section 53(1)(b) of the Commonwealth Act;
- (c) each instrument revoking a warrant issued to the Police Force;
- (d) a copy of each certificate issued under section 61(4) of the Commonwealth Act by a certifying officer of the Police Force; and
- (e) each authorisation made by the Commissioner under section 66(2) of the Commonwealth Act.

5. Other records connected with an interception

(1) The Commissioner must cause the following information to be recorded as soon as practicable after the event to which it relates occurs:

- (a) particulars of each telephone application for a warrant made on behalf of the Police Force;
- (b) in relation to each application for a warrant made on behalf of the Police Force, 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 warrant whose authority is exercised by the Police Force, particulars of –
 - (i) the warrant;
 - (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;
 - (d) in relation to each restricted record that has at any time been in the possession of the Police Force, particulars of –
 - (i) if the record was obtained by an interception under a warrant – that warrant;
 - (ii) each occasion on which the record came (whether by its making or otherwise) to be in the possession of the Police Force;
 - (iii) 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) each agency, body or other person (if any) from whom the Police Force received the record or to whom the Police Force supplied the record;
 - (e) particulars of each use made by the Police Force of lawfully obtained information;
 - (f) 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;
 - (g) 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 in relation to the Police Force.
- (2) The Commissioner must keep as records of the Police Force the information recorded under subsection (1).

6. Documents to be given to Minister

The Commissioner must give to the Minister –

- (a) as soon as practicable after a warrant is issued to the Police Force, a copy of the warrant;
- (b) as soon as practicable after an instrument revoking a warrant is issued to the Police Force, a copy of the instrument of revocation;
- (c) within 3 months after a warrant issued to the Police Force ceases to be in force –

- (i) a written report about the use made by the Police Force of information obtained by interceptions under the warrant; and
 - (ii) a written report about the communication of that information to persons other than members of the Police Force; and
- (d) 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) is required by Division 2 of Part IX of the Commonwealth Act to be set out in the Commonwealth Minister's report under that Division in relation to the year ending on that 30 June; and
 - (ii) can be derived from the records of the Police Force.

7. Documents to be given to Commonwealth Minister

As soon as practicable after receiving—

- (a) a copy of a warrant issued to the Police Force;
- (b) a copy of an instrument revoking a warrant issued to the Police Force; or
- (c) a report under section 6(c) or (d),

the Minister must give a copy of that warrant, instrument of revocation or report to the Commonwealth Minister.

8. Keeping and destruction of restricted records

(1) In this section, a reference to a restricted record is to be read as a reference to a restricted record that is in the possession of the Police Force, whether made before or after the commencement of section 35 of the Commonwealth Act.

(2) Except while a restricted record is being dealt with in accordance with this Act or the Commonwealth Act, the Commissioner must cause the restricted record to be kept in a secure place so that it is not accessible to persons who are not entitled to deal with it.

(3) The Commissioner must cause a restricted record to be destroyed without delay if he or she is satisfied that the record is not likely to be required for a permitted purpose in relation to the Police Force, other than a purpose connected with an inspection or a report on an inspection.

**PART 3 – INSPECTIONS OF RECORDS AND REPORTS BY
OMBUDSMAN**

Division 1 – Inspections and reports

9. General power to inspect and report on records

- (1) The Ombudsman may at any time –
 - (a) inspect the records of the Police Force to determine compliance by members of the Police Force with Part 2 during any period; and
 - (b) report to the Minister about the results of the inspection.
- (2) The Ombudsman may do anything necessary or convenient for the purposes of subsection (1).

10. Regular inspections of records

- (1) At least once in each period of 6 months, the Ombudsman must inspect the records of the Police Force to determine compliance by members of the Police Force with Part 2 since the last inspection.
- (2) Not later than 3 months after the end of each financial year, the Ombudsman must report in writing to the Minister on the results of inspections carried out in that financial year.

11. Report on contravention of Part 2

If, as a result of an inspection, the Ombudsman is of the opinion that a member of the Police Force has contravened the Commonwealth Act or the Commissioner has failed to comply with section 6(a), (b) or (c), the Ombudsman must –

- (a) allow the Commissioner an opportunity to provide written comments in respect of that matter; and
- (b) include in the report under section 9(1)(b) or 10(2) –
 - (i) a report on the contravention; and
 - (ii) a copy of the written comments of the Commissioner.

12. Notification of report

If the Ombudsman has provided a report under this Division to the Minister, the Ombudsman –

- (a) must notify the Commonwealth Minister, in writing, that the report has been given; and

- (b) must provide the Commissioner with a copy of the report.

Division 2 – Powers of inspecting officers

13. General powers for inspections

- (1) For the purposes of an inspection, an inspecting officer –
 - (a) after notifying the Commissioner, may enter at any reasonable time premises occupied by the Police Force;
 - (b) is to have full and free access at all reasonable times to all records of the Police Force that the inspecting officer considers are relevant to the inspection;
 - (c) despite any other law, may –
 - (i) make copies of; and
 - (ii) take extracts from,

records of the Police Force that the inspecting officer considers are relevant to the inspection; and

- (d) may require a member of the Police Force to provide to the inspecting officer any information that the inspecting officer considers is relevant to the inspection and that is in the member's possession or to which the member has access.
- (2) If an inspecting officer has reason to believe that a member of the Police Force is able to provide information relevant to an inspection, the inspecting officer may, by written notice provided to the member –
 - (a) require the member to provide the information –
 - (i) in writing and signed by the member;
 - (ii) at a place specified in the notice; and
 - (iii) within a period specified in the notice; and
 - (b) require the member, for the purpose of answering questions relevant to the inspection, to attend before an inspecting officer specified in the notice at the place, and within the period or at the time, specified in the notice.
 - (3) If an inspecting officer has reason to believe that a member of the Police Force may be able to provide information relevant to an inspection but does not know the member's identity, the inspecting officer may require the Commissioner or a person nominated by the Commissioner to attend before an

inspecting officer specified in the requirement for the purpose of answering questions relevant to the inspection or to identifying the member who may be able to provide the information.

(4) A requirement under subsection (3) is to be made by written notice provided to the Commissioner and specify the place at which, and the period within which or the time at which, the Commissioner or nominated person is to attend.

(5) Despite any other law, a person is not excused from providing information, answering a question or giving access to a document if required by or under this section on the ground that to do so 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.

(6) The Commissioner must ensure that members of the Police Force provide an inspecting officer with the assistance in relation to an inspection as the inspecting officer reasonably requires.

Division 3 – Information arising from inspection

14. Use of information

(1) The following are not admissible in evidence against a person except in proceedings for an offence against section 16(1), 18(1) or 19(1) or (2):

- (a) information provided or an answer given by the person under section 13 or as required by an inspecting officer under that section;
- (b) the fact that the person has given access to a document under section 13;
- (c) any information or thing (including a document) obtained directly or indirectly in consequence of the person having provided information or given an answer or access to a document under section 13 or as required by an inspecting officer under that section.

(2) Despite any other law, the Ombudsman and any inspecting officer may make use of, make a record of or provide to another inspecting officer and to the Ombudsman any information that –

- (a) is obtained during or as a result of an inspection; and
- (b) is relevant to the inspection.

(3) The Ombudsman may provide information of a kind mentioned in subsection (1) to the Commonwealth Ombudsman if satisfied that the provision of the information is relevant to the performance of the Commonwealth Ombudsman's functions under the Commonwealth Act.

15. Protection of Ombudsman and inspecting officers from liability

(1) Except as otherwise provided by sections 16 and 18, the Ombudsman or an inspecting officer does not incur any liability in respect of any act done (or omitted to be done) in good faith –

- (a) in the performance or exercise, or the purported performance or exercise, of any function or power under this Act; or
- (b) in the administration, or the purported administration, of this Act.

(2) If subsection (1) prevents civil liability attaching to a person, the liability attaches instead to the Territory.

16. Confidentiality of information obtained under warrant

(1) Except as otherwise allowed by this Act, the Ombudsman or an inspecting officer must not record or disclose information that –

- (a) was obtained by a person under a warrant; and
- (b) became known by the Ombudsman or officer during or as the result of an inspection.

Penalty: 100 penalty units or imprisonment for 12 months.

(2) Subsection (1) does not prevent the Ombudsman or an inspecting officer from –

- (a) disclosing in a report under Division 1 any matter for the purpose of stating the grounds for the conclusions and recommendations in the report; or
- (b) recording or disclosing information for the discharge of functions under this Act.

(3) A person cannot be compelled in any proceeding to disclose information that –

- (a) was obtained under a warrant (whether by the person or another person); and
- (b) became known by the person because he or she is or was engaged in the administration of this Act.

(4) If –

- (a) information was obtained under a warrant and the information became known by a person because he or she is (or was) the

Ombudsman or an inspecting officer and he or she is (or was) exercising a power or performing a function under this Act; and

- (b) the same information also became known by the person because he or she is (or was) engaged in the administration of another Act,

subsections (1) and (3) apply despite any provisions of the other Act that may allow the person to record, disclose or be compelled in a proceeding to disclose the information and those provisions of the other Act do not apply in respect of the information.

PART 4 – MISCELLANEOUS

17. Report to Commonwealth Minister

As soon as practicable after receiving a report under Division 1 of Part 3, the Minister must provide a copy of the report to the Commonwealth Minister.

18. Confidentiality

(1) Except as allowed by this Act, a person who is or was engaged in the administration of this Act must not disclose any information or record obtained by the person through his or her engagement in the administration of this Act unless the disclosure is made under this Act or under the Commonwealth Act.

Penalty: 100 penalty units or imprisonment for 12 months.

(2) Subsection (1) applies despite the provisions of another Act that may allow a person to disclose the information or record because the person was engaged in the administration of the other Act and the provisions of the other Act do not apply in respect of that information or record.

19. Offences

(1) A person must not, without reasonable excuse –

- (a) refuse or fail to comply with a requirement made under section 13(1), (2) or (3); or
- (b) obstruct or hinder an inspecting officer who is exercising powers under section 13.

Penalty: 100 penalty units or imprisonment for 12 months.

(2) A person must not provide information that the person knows to be false or misleading in a material particular to an inspecting officer who is exercising powers under section 13.

Penalty: 100 penalty units or imprisonment for 12 months.

20. Delegation by Ombudsman

The Ombudsman may delegate, in writing, any of his or her functions or powers under this Act, other than this power of delegation.

21. Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters –

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Regulations may apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the Regulations.

(3) The Regulations may provide for penalties not exceeding 5 penalty units for offences against the Regulations and, in the case of a continuing offence, a further penalty not exceeding 1 penalty unit for each day during which the offence continues after the first day.

C
C
C
C

C
C