

Chapter 2—Interception of telecommunications

Part 2-1—Prohibition on interception of telecommunications

7 Telecommunications not to be intercepted

- (1) A person shall not:
 - (a) intercept;
 - (b) authorize, suffer or permit another person to intercept; or
 - (c) do any act or thing that will enable him or her or another person to intercept;a communication passing over a telecommunications system.
- (2) Subsection (1) does not apply to or in relation to:
 - (a) an act or thing done by an employee of a carrier in the course of his or her duties for or in connection with:
 - (i) the installation of any line, or the installation of any equipment, used or intended for use in connection with a telecommunications service; or
 - (ii) the operation or maintenance of a telecommunications system; or
 - (iii) the identifying or tracing of any person who has contravened, or is suspected of having contravened or being likely to contravene, a provision of Part 10.6 of the *Criminal Code*;
where it is reasonably necessary for the employee to do that act or thing in order to perform those duties effectively; or
 - (aa) the interception of a communication by another person lawfully engaged in duties relating to the installation, connection or maintenance of equipment or a line, where it is reasonably necessary for the person to intercept the communication in order to perform those duties effectively; or
 - (ab) the interception of a communication by a person lawfully engaged in duties relating to the installation, connection or

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- maintenance of equipment used, or to be used, for the interception of communications under warrants; or
- (ac) the interception of a communication where the interception results from, or is incidental to, action taken by an officer of the Organisation, in the lawful performance of his or her duties, for the purpose of:
 - (i) discovering whether a listening device is being used at, or in relation to, a particular place; or
 - (ii) determining the location of a listening device; or
 - (b) the interception of a communication under a warrant; or
 - (c) the interception of a communication pursuant to a request made, or purporting to be made, under subsection 30(1) or (2); or
 - (d) the interception of a communication under an authorisation under section 31A.
- (2A) For the purposes of paragraphs (2)(a) and (aa), in determining whether an act or thing done by a person was reasonably necessary in order for the person to perform his or her duties effectively, a court is to have regard to such matters (if any) as are specified in, or ascertained in accordance with, the regulations.
- (4) Subsection (1) does not apply to, or in relation to, an act done by an officer of an agency in relation to a communication if the following conditions are satisfied:
- (a) the officer or another officer of the agency is a party to the communication; and
 - (b) there are reasonable grounds for suspecting that another party to the communication has:
 - (i) done an act that has resulted, or may result, in loss of life or the infliction of serious personal injury; or
 - (ii) threatened to kill or seriously injure another person or to cause serious damage to property; or
 - (iii) threatened to take his or her own life or to do an act that would or may endanger his or her own life or create a serious threat to his or her health or safety; and
 - (c) because of the urgency of the need for the act to be done, it is not reasonably practicable for an application for a Part 2-5 warrant to be made.

- (5) Subsection (1) does not apply to, or in relation to, an act done by an officer of an agency in relation to a communication if the following conditions are satisfied:
- (a) the person to whom the communication is directed has consented to the doing of the act; and
 - (b) there are reasonable grounds for believing that that person is likely to receive a communication from a person who has:
 - (i) done an act that has resulted, or may result, in loss of life or the infliction of serious personal injury; or
 - (ii) threatened to kill or seriously injure another person or to cause serious damage to property; or
 - (iii) threatened to take his or her own life or to do an act that would or may endanger his or her own life or create a serious threat to his or her health or safety; and
 - (c) because of the urgency of the need for the act to be done, it is not reasonably practicable for an application for a Part 2-5 warrant to be made.
- (6) As soon as practicable after the doing of an act in relation to a communication under the provisions of subsection (4) or (5), an officer of the agency which is concerned with the communication shall cause an application for a Part 2-5 warrant to be made in relation to the matter.
- (6A) Subsection (6) does not apply if action has been taken under subsection (4) or (5) to intercept a communication, or cause it to be intercepted, and the action has ceased before it is practicable for an application for a Part 2-5 warrant to be made.
- (7) Where after considering an application made in relation to a matter arising under subsections (4) or (5) and (6) a Judge or nominated AAT member does not issue a warrant in relation to the application, the chief officer of the agency concerned shall ensure that no further action is taken by the agency to intercept the communication or to cause it to be intercepted.
- (8) Subsections (4), (5), (6) and (7) only apply where the agency concerned is:
- (a) the Australian Federal Police; or
 - (b) the Police Force of a State.

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- (9) The doing of an act mentioned in subparagraph (4)(b)(ii) or (iii) or (5)(b)(ii) or (iii) in a particular case is taken to constitute a serious offence, even if it would not constitute a serious offence apart from this subsection.

Note: See subsection (6). A Part 2-5 warrant can only be issued for the purposes of an investigation relating to the commission of a serious offence.

- (10) Subsection (9) has effect only to the extent necessary:
- (a) to enable an application to be made for the purposes of subsection (6); and
 - (b) to enable a decision to be made on such an application and, if a Judge so decides, a Part 2-5 warrant to be issued; and
 - (c) to enable this Act to operate in relation to a Part 2-5 warrant issued on such an application.