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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

Telecommunications Amendment (Get a Warrant) Bill 2013

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator Ludlam)

**TELECOMMUNICATIONS AMENDMENT (GET A WARRANT) BILL 2013**

**Outline**

The Bill amends the *Telecommunications (Interception and Access) Act 1979* to require normal warrant authorisation procedures for law enforcement and intelligence agencies that wish to access telecommunications data.

**NOTES ON CLAUSES**

**Clause 1 – Short Title**

1. This is a formal provision specifying the short title of the Bill.

**Clause 2 – Commencement**

1. The Bill's provisions are to commence the day after it receives Royal Assent

**Clause 3 – Schedules**

1. This clause provides that an Act that is specified in a Schedule is amended or repealed as set out in that Schedule, and any other item in a Schedule operates according to its terms.

**Schedule 1 – Amendments to the *Telecommunications (Interception and Access) Act 1979***

**Item 1**

1. Item 1 inserts a new Part 109A and 109B into the *Telecommunications (Interception and Access) Act 1979* that requires ASIO to secure a warrant in order to access existing and prospective telecommunications, as ASIO are currently required to do for access to stored communications.
2. Item 2 provides additional matters that an issuing authority must be satisfied of prior to issuing a warrant.
3. Item 3 provides that stored and other communication warrants authorise access to information about a person that is sent or received during the period authorised by the warrant.
4. Item 4 removes references to Division 3 and 4A from section 171(1). This is a consequential amendment that takes into account the fact that Divisions 3 and 4A of Part 4-1 are being repealed.
5. Item 5 removes language related to Division 3 which is being repealed.
6. Item 6 removes a reference to Division 4A which is being repealed.
7. Item 7 removes a reference to Divisions 3 and 4Awhich are being repealed.
8. Item 8 removes a reference to Divisions 3 and 4A which are being repealed.
9. Item 9 omits references to Divisions 3 to 5. The amendment is consequential upon the repeal of Divisions 3 and 4A of Part 4-1 of Chapter 4.
10. Item 10 omits references to Divisions 3 to 5. The amendment is consequential upon the repeal of Divisions 3 and $A of Part 4-1 of Chapter 4.
11. Item 11 removes references to Divisions that are removed through this Bill.
12. Item 12 repeals Division 3 which allowed disclosure of telecommunications information without a warrant.
13. Item 13 Repeals sections 177 and 178 that allowed telecommunications information to be disclosed without a warrant.
14. Item 14 repeals section 180 which allowed for prospective telecommunications information to be disclosed without a warrant.
15. Item 15 repeals Division 4A of Part 4-1 of Chapter 4 which allowed for disclosure of telecommunications information and documents to the Federal Police and foreign law enforcement agencies without a warrant.
16. Item 16 removes a reference to the now omitted Division 4A of Part 4-1 of Chapter 4.
17. Item 17 removes references to Divisions 3 and of Part 4-1 of Chapter 4.
18. Item 18 removes penalties for disclosing or using information accessed without a warrant because accessing information without a warrant is no longer lawful through this Bill.
19. Item 19 is a consequential amendment that removes a reference to the Organisation (being defined as the Australian Security Intelligence Organisation in the *Telecommunications (Interception and Access) Act 1979*). This provision is no longer required because the Organisation is not able to request a warrant under Division 4.
20. Item 20 omits a reference to Division 4A of Part 4-1 of Chapter 4.
21. Item 21 preserves the disclosure of telecommunications information to be used in helping to secure the whereabouts of missing persons.
22. Item 22 removes reference to Division 4A of Part 4-1 of Chapter 4l.

**Schedule 2 - Amendments to the *Telecommunications (Interception and Access) Act 1979***

1. Items 1-93 are consequential amendments that simply replace the word “stored” throughout the Act with “stored and other” (or “stored or other” in some cases). The amendments reflect the expanded criteria for the kind of information that the warrant can be used to obtain.
2. Statement of Compatibility with Human Rights

## Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### Public interest test for changes in control of nationally significant media operations

* 1. The *Telecommunications Amendment (Get a Warrant) Bill 2013* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### Overview

* 1. The purpose of the Bill is to enhance the human right to privacy, reintroducing judicial oversight and returning to warrant procedures for accessing information about the telecommunications of Australian citizens.

### Human rights implications

* 1. This Bill is an express effort to restore Australians enjoyment of Article 19 of the Universal Declaration of Human Rights relating to the right to freedom of opinion and expression without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
	2. This Bill is relevant to the resolution adopted by the UN Human Rights Council on 5 July 2012 and reaffirmed by the UN General Assembly on 29 June 2012 and 10 August 2011 regarding the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, which focused on key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet.
	3. The Rapporteur underscored the importance of the role of Governments in fully guaranteeing the right to privacy of all individuals, without which the right to freedom of opinion and expression cannot be fully enjoyed. The Rapporteur emphasised that "States are obliged to guarantee a free flow of ideas and information and the right to seek and receive as well as to impart information and ideas over the Internet. States are also required under international law to prohibit under its criminal law the following types of content: (a) child pornography; (b) direct and public incitement to commit genocide; (c) advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; and (d) incitement to terrorism. However, the Special Rapporteur reminded all States that any such laws must also comply with the three criteria of restrictions to the right to freedom of expression, namely: prescription by unambiguous law; pursuance of a legitimate purpose; and respect for the principles of necessity and proportionality.
	4. Restoring warrant procedures to telecommunications interception and access warrants safeguards Australian law from becoming unduly imbalanced towards national security concerns and eroding civil liberties. Reinstating judicial scrutiny will provide confidence that surveillance and interception of citizens data is always necessary and proportional and in accordance with Australia’s obligations under international human rights law.

### Conclusion

* 1. This Bill is compatible with human rights; it strengthens human rights in Australian law that reflects the deliberations and resolutions of the UN human rights machinery.

Senator Ludlam