

## Telecommunications (Interception and Access) Amendment Bill 2007

### Comparison of provisions

#### Access to telecommunications information

- Transferring law enforcement related provisions from Part 13 of the *Telecommunications Act 1997* (the Tel Act) to New Chapter 4 of the *Telecommunications (Interception and Access) Act 1979*.

Telecommunications Act 1997	Equivalent TIA Amendment Bill 2007	Comments
<p>Part 13 – Protection of communications Sections 276/277/278</p> <p><b>Primary disclosure offences</b></p> <p>Create the primary offences for disclosure of information by eligible persons, data base operators and emergency call persons respectively</p>	-	<p>The principal disclosure offences remain in the Tel Act, with Chapter 4 providing the additional law enforcement and national security specific exceptions.</p> <p>However, new section 172 operates to ensure that these exceptions do not permit disclosure of the contents of substance of a communication.</p>
<p>Section 282</p> <p><b>Law enforcement and protection of public revenue</b></p> <p>Creates an exception to permit disclosure to a criminal law enforcement agency or a civil penalty enforcement agency or a public revenue agency</p>	<p>Division 4</p> <p>Enforcement agencies</p>	<p>Transfers existing provisions.</p> <p>And</p> <p>Creates a new distinction between historical and prospective telecommunications data. The section also changes the terminology from ‘certification’ to ‘authorisation’.</p>

<p>Section 283 <b>ASIO</b></p> <p>Creates an exception to permit disclosure to ASIO</p>	<p>Division 3</p> <p>ASIO</p>	<p>Transfers existing provisions.</p> <p>And</p> <p>Creates a new distinction between historical and prospective telecommunications data.</p>
<p>Section 298 <b>Secondary disclosure/use offences</b> <b>Law enforcement and protection of public revenue</b></p> <p>Information obtained may be used where it is reasonably necessary for the enforcement of the law.</p>	<p>Division 5</p> <p>Uses of telecommunications data connected with provision of access</p> <p>Division 6</p> <p>Secondary disclosure/use offence</p>	<p>Transfers existing provisions on the use of information obtained.</p> <p>Creates new secondary disclosure provisions: a general prohibition on secondary disclosure and several permitted exceptions.</p>
<p>Section 305 <b>Record-keeping requirements</b> <b>Certificates issued by authorised officers of enforcement agencies</b></p> <p>Creates notification requirements on requesting agencies.</p> <p>Section 306 <b>Record of disclosures</b></p> <p>Creates record keeping obligations on carriers who disclose information to agencies.</p>	<p>Part 4-2</p> <p>Procedural requirements relating to authorisations</p>	<p>Existing section 305 remains in the Tel Act but is amended to ensure consistency with the amended TIA Act.</p> <p>The new Part creates record keeping obligations on requesting agencies.</p>

## Telecommunications (Interception and Access) Amendment Bill 2007 Comparison of provisions

### Cooperation with industry

- Transferring law enforcement related provisions from Parts 14 & 15 of the *Telecommunications Act 1997* (the Tel Act) to New Chapter 5 of the *Telecommunications (Interception and Access) Act 1979*.

Telecommunications Act 1997	TIA Amendment Bill 2007	Comments
Part 14 – National interest matters Section 313 <b>Obligations of carriers and carriage service providers</b>  Obligation to provide such help as is reasonably necessary; and good faith provisions.	-	Section 314 continues to operate in relation to assistance given under New Chapter 4.
Section 314 <b>Terms and conditions on which help is to be given</b>  Assistant to be given on a no profit/no cost basis; and principles related to and from a delivery point.	-	Section 314 continues to operate in relation to the costs of compliance with Authorisations for access to telecommunications data under Divisions 3 or 4.
Section 314A <b>Delivery points</b>  Determination of delivery points.	Section 188  Delivery points	Provisions transferred without substantial change.
Part 15 – Cooperation with agencies Section 322 <b>Attorney-General may make determinations</b>  Determination making power to define interception capability based on an international standard.	Section 189  Minister may make determinations	Transfers existing provisions with minor changes to update terminology.

<p>Sections 323 and 324 <b>[Obligations of carriers]</b></p> <p>Provides obligations for those covered and not covered by an Attorney-General's determination on interception capability.</p>	<p>Sections 190 &amp; 191</p>	<p>Transfers existing provisions.</p>
<p>Subdivision C Sections 325-327 <b>Exemptions</b></p> <p>Exemptions to obligations on interception capability.</p>	<p>Division 2 Exemptions</p>	<p>Modifies existing provisions so that the CAC may grant exemptions. ACMA continues to grant exemptions for trial services.</p>
<p>Division 3 <b>Nature of an interception capability plan</b></p> <p>Sets out obligations for developing and lodging an interception capability plan.</p>	<p>Part 5-4 Interception Capability Plans</p>	<p>Transfers existing provisions with minor changes designed to simplify the operation of the Part.</p>
<p>Division 4 Sections 332E-332J <b>Requirement arising from proposed technological changes</b></p> <p>Requires carriers to give notice of new or changing technologies and enables the agencies to specify delivery requirements.</p>	<p>Part 5-5 Delivery capability</p>	<p>Modifies existing provisions to enable the CAC to nominate delivery requirements operating from the delivery point to the agency, without the existing linkage to new or changed technology.</p>
<p>Division 5 Sections 332K-332Q <b>Allocation of costs [etc]</b></p> <p>Provides the basis for allocating costs between carriers and agencies for developing, installing and maintaining an interception capability.</p>	<p>Part 5-6 Allocation of costs</p>	<p>Transfers existing provisions and simplifies the operation of the Part. Changes maintain the existing cost allocation principles.</p>

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### Guide to the transfer of provisions

#### Access to telecommunications information

<b>Current provisions of the Tel Act</b>	<b>Proposed provisions of the TIA Bill</b>	<b>Purpose</b>
282	Division 4	Disclosure permitted to law enforcement agencies
283	Division 3	Disclosure permitted to ASIO
298	Division 5	Provisions governing use of accessed data
-	Division 6	New secondary disclosure and use provisions

#### Cooperation with industry

<b>Current provisions of the Tel Act</b>	<b>Proposed provisions of the TIA Bill</b>	<b>Purpose</b>
314A	188	Delivery points
322	189	Ministerial determinations
323	190	Obligations of persons covered by a determination
324	191	Obligations of persons not covered by a determination
326	192	CAC exemptions
327	193	ACMA exemptions for trial services
329	195	Nature of an interception capability plan
330	196	Time for giving IC Plans by carriers
331	197	Time for giving IC Plans by nominated carriage service providers
332A	199	Commencement of IC Plans
332B	200	Compliance with IC Plans
332C	198	Consideration of IC Plans
332D	201	Consequences of changed business plans
332J	Part 5-5	Delivery capability
332L(1)	207	Costs to be borne by the carriers
332N	209	Working out costs of delivery capability
332P	210	Examination of lower cost options
332Q	211	ACMA may require independent audit of costs